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TRANSCRIPT OF RECORD

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IN THE

Supreme Court of the United States

October Term, 1948

No. 263

SHULIM WIXMAN, Also Known as SAMUEL MORRIS WIXMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 870 Brannan Street, San Francisco

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No. 11599

United States
Circuit Court of Appeals
For the Ninth Circuit

SAMUEL MORRIS WIXMAN, also known as SHULIM WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 870 Brannan Street, San Francisco 7-10-47—60

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ORIGINAL
(To be retained by Clerk of Court)

UNITED STATES OF AMERICA

No. 1286536

PETITION FOR NATURALIZATION

To the Honorable the DISTRICT Court of THE UNITED STATES of LOS ANGELES, CALIF.

This petition for naturalization, hereby made and filed pursuant to Section [illegible] of the Nationality Act of 1940, respectfully shows:

(1) My full, true, and correct name is SHULIM WIZMAN

(2) My present place of residence is 870 N. Kenmore, Los Angeles, 27, Cal. (3) My occupation is Research worker Social Service &

(4) I am 45 years old. (5) I was born on March 25, 1900 in Kiev, Russia

(6) My personal description is as follows: Sex male; color white, complexion fair, color of eyes hazel, color of hair brn, height 5 ft 8 in, weight 130 pounds; visible distinctive marks none; race white; present nationality none-last Russia

(7) I am married; the name of my wife or husband is Myrtle; we were married on June 25, 1927 at Cupertino, Calif.; he or she was born at Minneapolis, Minn, on June 3, 1905

entered the United States at [illegible] on [illegible] for permanent residence in the United States, and now resides at with me and was naturalized on [illegible] at [illegible]

certificate No. [illegible]; or became a citizen by [illegible]

(7a) (If petition is filed under Section 311, Nationality Act of 1940) I have resided in the United States in marital union with my United States citizen spouse for at least 1 year immediately preceding the date of filing this petition for naturalization.

(7b) (If petition is filed under Section 319, Nationality Act of 1940) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and such husband or wife is regularly stationed abroad in such employment. I intend in good faith to take up residence within the United States immediately upon the termination of such employment abroad.

(8) I have 1 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

Myrsam(m) 2-22-28-Calif; res. with me

(9) My last place of foreign residence was Kiev, Russia (10) I emigrated to the United States from Kiev Russia

(11) My lawful entry for permanent residence in the United States was at New York, N.Y. under the name of Scholem Wiseman on July 16, 1911 on the SS Grant President as shown by the certificate of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(13) (Declaration of intention not required) (14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (16) I am able to speak the English language (unless physically unable to do so). (17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (18) I have resided continuously in the United States of America for the term of 1 year at least immediately preceding the date of this petition, to wit: since July 16, 1911 (19) I have now heretofore made petition for naturalization number 94,859 on Dec. 18, 1941 at Los Angeles, Calif. in the U.S. District Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: dismissed at petitioner's request and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said declaration into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two witnesses as required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to SAMUEL MORRIS WIZMAN

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name. SO HELP ME GOD.

bms

X Shulim Wizman
(full, true, and correct signature of petitioner without abbreviation)

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The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Herbert Ganahl, my occupation is Attorney

I reside at 2142 W. 78th St. Los Angeles, Calif.
(Number and street) (City or town) (State)

My name is Lester W. Roth, my occupation is Attorney

I reside at 621 S. Hope St. Los Angeles, Calif.
(Number and street) (City or town) (State)

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Shulim Wyman, the petitioner named in the petition for naturalization of which this affidavit is a part, since 9-1-44 (Month) (Day) (Year), to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and I have personal knowledge that the petitioner is now and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

Herbert Ganahl (Signature of witness)

Lester W. Roth (Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses, in the respective forms of oath shown in said petition and affidavit, in the office of the Clerk of said Court at Los Angeles, Cal. this 25th day of Septe, Anno Domini 19..47, hereby certify that Certificate of Arrival No. 23 108035 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, has been by me filed with, attached to, and made a part of this petition and affidavit.

SEAL OF THE U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

By ..... Deputy Clerk.

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: SO HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

Shulim Wyman
(Signature of petitioner)

Sworn to in open court, this ..... day of ....., A. D. 19.....

..... Clerk.

By ..... Deputy Clerk.

NOTE.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. ..... of List No. ..... and Certificate No. ..... issued.

Petition denied: List No. 1 - 2-5-47

Reason

Failure to establish attachment to the principles of the Constitution and favorable disposition to the good order and happiness of the United States.

Denied 2-7-47 See Order in file.

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GOVERNMENT'S EXHIBIT No. 1

Economic Trends

Mr. Chairman and Friends:

Abraham Lincoln, when taunted on his homeliness by a political opponent during a debate, thought for a moment and then remarked,

"I know I am no beauty, by gar;
There are many more handsome, by far.
But my face—I don't mind it,
For I am behind it.
It's those in front that I jar."

If I am permitted to paraphrase Lincoln's answer, I would say that, if some ideas I shall bring out are somewhat unconventional, unorthodox by far, I, too, do not mind them, for I am squarely behind them. I do hope you out there in front they will not jar.

There seems to prevail a mistaken notion that anyone who entertains and expresses—no matter how softly—any thoughts and principles other than those in support of the existing order, is ipso facto unpatriotic. From the outset may I say that the speaker yields to no one in the matter of loyalty to and love for this country, these United States of America. However, the country have in mind, may perhaps be to a degree different from that which some have been accustomed. The land I have in mind is one which beckoned to me some years ago as the land of opportunity for all, a land of plenty, one, the resources of which were sufficient to wipe

Government's Exhibit No. 1—(Continued)

out needs, hardships, and poverty for all honestly willing to work; a land in which cooperation and social-mindedness could create all necessities and comforts for all. On the other hand, if disloyal I am so only to a land in which want stalks in the homes and streets of cities and towns, in villages, on farms, on the highways and byways. I suffer but little love for a land that sets up upon and pedestal and accords a place of honor to those who are ever ready to brand everyone else an enemy of the country, while themselves fail to show much faith in the Bill of Rights, in the Constitution, or even in some of the more fundamental laws of humanity, decency and fairness.

I am about to offer to you a straight-forward examination of trends of thought that seem to warrant special attention because of their significance in present day economic life. The ideas to be presented are not elaborately detailed. They are not very statistical. What is intended is simply to analyze and evaluate these ideas.

My introductory words assumed the likelihood of differences of opinion in our midst. Any discussion of economic problems leads inevitably into the troubled waters of controversy. The question whether a lecturer, a teacher, or a writer should or should not "take sides" in a controversial issue is a very mooted one. Personally I believe that one should "take sides". Why? Because I am of the opinion that an honest and careful investigation of economic trends is bound to give the investigator

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Government's Exhibit No. 1—(Continued)

a fairly definite conclusion. The students, the audience, the readers, then, are entitled to know what the conclusion is and the logic on which it is based. Experience in lecturing and writing has proven that this practice of arriving at and stating conclusions is sound. A conclusion definitely formulated challenges the listener or the reader. It forces him into agreement or disagreement with the author, which in itself helps to develop logical argument in support of whatever stand he takes. This, again, results in defense or attack on the part of those who take an opposing stand. And it is out of such clashes of conflicting ideas that there comes that development, that growth which is the very core of knowledge, the very life-blood of education.

In these days of necessary and inevitable social change it is importnat that we all remain calm and approach everything with scientific detachment.

The rapid development of our life in its numerous phases compels a constant restatement of the philosophies and theories underlying this development. This restatement, even in its latest revision, is bound to lag [6] more or less behind the reality of the moment which the restatement attempts to explain, because, by the time those who seek to explain and clarify the discovered new reality, the latter has partly ceased to be. Moreover, a still newer reality has taken its place. This mobility, this flux of the affairs of mankind, to me at least, is as natural as the ever-changing trend of things

Government's Exhibit No. 1—(Continued)

in Nature in general. Are we fearsome of describing and accounting for changes that take place in the inanimate, plant or animal world? No. Are we intolerant of new theories, facts, concepts in those fields of life? No. Is the world that concerns humans a part of Nature as a whole? Yes. Obviously, then, we humans must tolerate, no less, new philosophies that purport to describe changes in the realm of activities of humans. In particular, must we give a free hand to those whose object it is to interpret the cause and effect of those changes.

Now, if you will bear with me, suppose, for a few moments, we arrive at a perspective of this world of humans we call society. Suppose, again, we examine, even hurriedly this particular society we know so well—our United States. Examining it we will be examining the world at large. For does it not typify to a great degree the world?

Our country is probably the richest country in the world. In fact, we need not even qualify our statement with "probably." It is the wealthiest region right now—not potentially. It is the richest because it had in abundance at least three fundamental factors so essential for the creation of things —tangible and intangible—that would make for general progress and universal well-being. Those three necessary factors are:

1. Natural resources
2. The human agency
3. Tools or machine equipment

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Government's Exhibit No. 1—(Continued)

Let us examine very briefly each of those in turn:

The first, Natural Resources, consists of land, soil, of which there abounds in the United States to the extent of roughly about 2 billion acres, only 1/3 of which is used presently for varied crops or for pasture; ¼ is still covered with forests; and less than 1/5 being still characterized by desert vegetation, which type of land, however, is gradually reclaimed by irrigation. These same 2 billion acres contain, in varying amounts and proportions, no less than 1,500 mineral substances, oil, gas, power of one sort or another, food, actual and potential.

The Human Factor, totaling roughly about 125,000,000, we are told, could be used in productive capacity to the extent of about 1/3 of its numbers.

Now, as to the third fundamental agency of a changing, productive society; the tools, the machine or mechanical outlay. Scientists, engineers, technologists tell us that right at this moment we have enough of modern machinery to permit every farmer—were he to utilize the tools at his disposal, or which he could have, if he were able to afford them—to produce enough to feed twenty people. We are told by the same scientists and engineers that our industries, such as the shoe industry, are now making use of their machine equipment to only between 25-50% of their maximum efficiency. That is, that industries today, with no additional or new machines, could still produce, in some cases, 50% more commodities than they are producing. We are assured that with only a few hours of work

Government's Exhibit No. 1—(Continued)

daily, a few, not 8, nor 10, nor 12, each person can earn an annual income of between $6,000-$20,000. If brief, that given the factors needed for the creation of goods for the use of man, there should be production and earnings in sufficiency for all.

What, however, is the actual state of affairs? Let us turn to no other source for our information that the periodic reports and bulletins issued by the different departments of the United States Government. Surely these should be regarded as authentic.

On the basis of such government estimates there are today, conservatively speaking, still some 12,000,000 able-bodied men and women begging for work at [7] almost any price. And they are still denied that opportunity. They asked to be permitted to make clothing for those whose clothes are threadbare, or for those who have none. (The growth of the Nudist fad of late years seems to me as no mere accident.) They begged to be allowed to create shoes for those the soles of whose shoes are worn-out and full of holes; for those who are down-in-their-heels. They ask for permission to tear down the smelly, slimy, grimy tenement houses of our slums, dwellings which have become little else than disease-infested, vermin-beleagered fire-traps. They ask to errect in their stead dwellings fit for man of the 20th century to live in. These willing-and-able-to-work unemployed literally beg to be allowed to raise enough food for the hungry and famished. But all of this they are denied. And as a result millions still go about in worn-out, ragged clothing; millions

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Government's Exhibit No. 1—(Continued)

still are immured in dilapidated, unwholesome homes; millions still walk about underfed, nearly starved. And all this continues while the goods so sorely needed by these millions, and which goods were created by these self-same millions in times when it was still profitable to create goods, these goods lie in wharehouses, in bins, on the shelves. And these goods in their silence cry out eloquently for a consumer, but in vain.

Let us turn over the pages of this record of misery and stop for a moment at another picture—one that strikes much closer to home. Again the government bulletins divulge an unforgettable scene. Leaflet number 44 of the Department of Interior gives us an insight into what is going on in the field of education—a field to which this democracy of ours has ever been ready to point with pride, to hold up as a model. This leaflet, entitled "The Deepening Crisis in Education", states that during one year, despite laws providing for universal compulsory education, close to 3,000,000 children between the ages of 6 to 15 were not in school. Why? Not enough schoolrooms? No. Many a little red schoolhouse, with its window shutters and doors closed, looked longingly down on the youngsters running wildly about. Well, perhaps, not enough teachers to care for these 3,000,000 schoolless children. On the basis of 1930 normal classroom population it would take some 100,000 teachers to care for and instruct these youngsters. Where shall we get this many teachers in this crisis, you may ask? Where? But wait. The

Government's Exhibit No. 1—(Continued)

same leaflet, eminating from Harold L. Ickes, secretary of the Department of Interior, continues to tell us that there were during that year in the neighborhood of 250,000 unemployed teachers, (over 80,000 in California alone) all certificated, all trained and tried, many of them with many years of experience behind them—all ready to teach at that very moment. And what is even more remarkable, let us have a glimpse at the salaries of those who were still employed. 1 out of 4 teachers on a job received a salary of less than $750 a year. 84,000 teachers in rural districts, earned incomes of less than 450 dollars a year. Think of it, less than 38 dollars a month. 1 out of every 13 negro teachers earned a monthly salary of $25 or less. 1 out of every 4 teachers in rural Missouri taught school during that year from 1 to 4 months without pay. Do we have to repeat the stories of teachers' plight in Chicago, in Detroit? In the face of these facts, we have the United States Chamber of Commerce striking at every public school with a 20-point program, every point of which spelled curtailment of educational opportunities. And a ranking officer of the Dep't of Education, after travelling leisurely about in fascist countries like Germany and Italy, suggested, on his return, the following educational proposals:

1. Close one out of every five high schools.
2. Send four out of every five children out on the streets or into jobs now held by grown men and women.

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Government's Exhibit No. 1—(Continued)

3. Make the tuition rates so high that only children of the rich would be admitted.
4. Stop the mass movement into colleges.

Does this bespeak of universal compulsory education? Is this offering equal educational opportunities for all?

Of course, there are many who say that these are not normal times, that we are in a depression now. That Capitalism is all right, that we better give it a chance to get on its feet again, that even now it is already on the way to recovery; in fact, that prosperity is just around the corner. Let us not be fooled again. Personally, I am somewhat impatient with such contentions. [8] In fact, I agree heartily with President Roosevelt who remarked, "The overwhelming majority of our population has little patience with that small minority which vociferates today that prosperity has returned, that wages are good, that crop prices are high and that government should take a holiday."

Even if we assume that a capitalist revival could be stimulated and affected by inflation and deflation schemes, by public construction schemes, or by what-have-you schemes, it would still have in it the inescapable capitalist tendency to generate a renewed depression. For the root fault of capitalism is "it leads, as soon as it becomes prosperous, to a self-destructive mal-distribution of income. The difficulty is not that there is not enough purchasing power to buy the available supply of goods, but that

Government's Exhibit No. 1—(Continued)

this purchasing power is wrongly distributed—too much to the rich and too little to the general body of wage workers." In the course of economic growth we have had many periods of so-called prosperity. However, the trouble was that the wealth of this mis-named prosperity was not equitably distributed among the millions of our country. Much too much profit went back to build new factories and too little found its way back to the people to buy the products from the factories we already had. This situation was bad both ways. Too much was produced and too little was consumed, in proportion as the margin between the value of goods produced and the value of goods consumed widened. As a result too great a share of prosperity went to too few people. These few amassed more and more because a person with a million dollars does not actually consume very much more than a person with a thousand dollars. After all, even the very very rich do not buy, let us say, $50.00 worth of ham and eggs for breakfast, which means that a partial solution to the ills besetting us is, to quote even General Hugh Johnson, "to find a way to let everybody have half a dollar's worth of ham and eggs." A boom under capitalism, which does not generate a new depression is impossible, since it is the inherent capitalist tendencies and contradictions that lead unavoidably to the logical slumps. The economic history and record of the economic growth of any and of all the industrially developed states proved this beyond a shadow of a doubt. Capitalism, then,

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under those circumstances, fails to provide the essentials for the system which is hopes will keep it alive.

In consequence, if the strongest card of the defenders of capitalism has always been that, despite all of its undenied inperfections and injustices, it does somehow on the whole contrive to "deliver the goods", so to speak, then surely it stands condemned and convicted by the arguments of its own apologists. For that is just what today capitalism is most obviously failing to do. In the face of an unprecedently rapid advance in productive power in both industry and agriculture—which ought to by all rules and regulations of the plainest common sense, yield to every person of every community a rapidly rising standard of life—one finds the wheels of production slowed down to a dangerous degree, and unemployment and distress existing on a scale unknown to living memory. Must it take, then, [9] much intelligence, to see that there must be something radically wrong with a system which holds that it is more beneficial to maintain millions upon millions of people in idleness than to set them to useful work? With the spectacle of economic and political futility, who can respect a system which, having the means to produce abundance, can find no way of distributing the wealth tha ts iits for the taking? What serious, sober, thinking or sane human being can rest satisfied with capitalism as it is right now? In its attempt to hold on for dear life, with its periodic booms and depressions, de-

Government's Exhibit No. 1—(Continued)

pressions and booms, for the sake of the fiction of prosperity, the system reminds me of the inmate in the insane asylum who, when asked by the examining psychiatrist as to why he continuously beat his head on the cell wall, replied, "I beat my head periodically on the wall because I enjoy the sensation when I stop."

This picture as painted, is the direct and inescapable result of the logic of events of capitalism of the 19th century and before. That capitalism was by its very nature, one without a plan. At least not a conscious plan, for whatever planning there may have been in it, was done by a mysterious power—an "invisible hand", as Adam Smith called it. Now, it became nothing short of blasphemy to attempt to interfere with the operation of that "invisible hand", and as long as it functioned somewhat satisfactorily for some, its workings were not questioned. But today a growing skepticism has put economic faith in Providence at a discount. As a result, for some years past one has been hearing of a strange new economic doctrine—a capitalist planned economic system. The advocates of this idea are "those from the capitalist ranks who have become influenced in part by the great growth of trusts and combines and partly by the example of the Five Year Plans elsewhere. Both, they say, have established an ordered system of production."

But capitalist planning is highly paradoxical, because planning involves the elimination of private enterprise and competition in the matter of kinds

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Government's Exhibit No. 1—(Continued)

of goods produced, price to be charged, the share that is to go to the producer, the amount to be set aside for capital accumulation, and so forth. Now, are not the eliminated elements of private enterprise and competition the very props of capitalism, which if knocked from under would carry with them the system itself? And as long as industries are to be carried on with private profit as the incentive for production, the state will be compelled to guarantee the capitalist's profits, if it undertakes to direct its business for him. This in itself will destroy the incentive for efficient production, will tend to disrupt the capitalist system. In the end it will be exposed to the same dangers which face it today —unless it can "reconcile itself to altering the distribution of income drastically in favor of the wage-earning class. If it fails to do so, it will go down before the sheer weight of the poverty-stricken. If it does distribute incomes more equitably, the wage-earning class, given added power through augmented income, will insist on taking over the control of the economic system for itself." State capitalism under those conditions will find itself between the proverbial Scylla and Charybidis, between wrack and ruin. We cannot consequently, build up much of a case for state capitalism. [10]

With state capitalism out of the picture, what then is to take its place? Many suggest that the answer lies in one of two contending, underlying philosophies, which, thrown into the arena of today, are fighting for acceptance. These two under-lying

Government's Exhibit No. 1—(Continued)

philosophies are, individualism and collectivism, which in their latest form we may designate as fascism and socialism respectively. Interested as we are in today primarily let us take the newest arrivals into the laboratory and investigate the makeup and potentialities and promises of each.

What is the fascism? Well, fascism, whether in brown, black, silver, khaki or gold shirts, is the agent of big business in its struggle to retain economic and political power in diseased and dying capitalist states. It is the unconcealed rule of monopoly capitalism.

Wherever it puts in an appearance it arises at first as a lower middle class phenomena superimposing itself upon the capitalist class. The reason why the lower middle class is of such vital concern wherever fascism is mentioned, is because at the present time this same lower middle class—along with the working masses, has been driven relentlessly to the wall by the accumulated power of big business. The latter is the ruling class in modern society.

But today, fascism, no matter how willing it might be, can no longer serve the economic interest of the larger section of the lower middle class because the existing industrial structure will not permit it. The technological set-up of modern society is such that it is well nigh impossible to translate lower middle class economic interests into action. Therein is the rub as well as the basic con-

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Government's Exhibit No. 1—(Continued)

tradiction of fascism. For, were it to attempt to reform or to rejuvenate the economic power of the lower middle class, implant some monkey glands, so to speak, it will find itself at variance and out of harmony with the interests of big business. Why? Because the economic structure of contemporary society is definitely built about an axis of mass production. To rebuild that structure about an orbit of small production would mean of necessity the tearing down of the whole technological structure, of this our society. Such a step in its turn would result in its complete economic paralysis. The fact that modern industry has introduced mass production in almost everything—from the manufacturing of toothbrushes to that of the automobile—spells the conclusion that in the struggle between two mutually antagonistic industrial processes, the small shop-keeper has no more chance of ultimate survival than the small individual store-keeper. Thus the very economic order of present day society will prevent fascism from injecting political restoratives into the lower middle class in order to revive its fast dwindling powers.

Failing thus in its primary function, does it mean that fascism will confess its impotence and capitulate—give up its ghost so to speak? Not at all.

The experience and history of the past few years has proved to us that wherever a clash of interests such as outlined above occurs, fascism in the main considers itself the dutiful servant of big business, and it is the latter which provides the financial sup-

Government's Exhibit No. 1—(Continued)

port to necessary [11] for the establishment and entrenchement of fascism. It is true fascism makes gestures to discipline the operations of big business in the interests of the corporate state—which means the creation of a national capitalist state to take the place of the hither-to pseudo-democratic-individualistic, capitalist state. This in itself is a confession that something is "rotten in Denmark". But the national capitalist state contains to no less a degree the inner contradictions of the more traditional capitalist society. And these inner contradictions, when carried to their logical conclusions, lead inevitably to privation and misery on the one hand, or to imperialism, aggression and war on the other hand. That war is inevitable, we may gather from the very apostle of fascism, Benito Mussolini, who feels that "fascism . . . . . believes neither in the possibility nor the utility of perpetual peace. It thus repudiates the doctrine of pacifism born of renunciation of the struggle and an act of cowardice in the face of sacrifice. War alone brings up to its highest tension all human energy and puts the stamp of nobility upon the peoples who have the courage to meet it."

What on the other hand is the antagonist of fascism? The collectivist state, according to its proponents, in brief, proposes that, "all resources, all lands and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication, should be, not private property but the common property of all

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Government's Exhibit No. 1—(Continued)

those who work." It further proposes that society should consist only of those who work, which means that all members of society should be socially useful human beings . . . . . that production be made to serve the needs of those who work, rather than to serve the needs of a few parasites . . . . . that production and distribution of goods be planned scientifically to avoid anything resembling the crises of capitalist society, that the society established be intent on developing the machine technique, mass production, and a minute division of labor to the fullest possible extent . . . . . ."

But how is mankind to reach this state of practical idealism? The collectivist believes that it is necessary for society to go through four stages of development in the path from capitalism to socialism.

First of all, there must be the stage of the bourgois capitalism, which is characterized by private property, free enterprise and competition. This state of being, because of its inner defects and contradictions, must give way to another, "the change to be expediated and effected by the strong, determined, class-conscious part of the working class—" all workers or producers, or those laboring by brain or brawn—when a favorable opportunity presents itself.

This achieved, there is to follow the second stage—"the dictatorship of the masses." Realizing that since not all the workers are capable in managing government and industry, there must be an intelli-

Government's Exhibit No. 1—(Continued)

gent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals.

The second stage is to give way to the socialist society—the third phase of collectivism. During this, "all means of production [12] will be in the hands of the democratically governed state. The masses of workers will now be in control. Wages will still be paid on the basis of efficiency or productivity, with some prevailing differences in wages as a result." Since there will still be considerable centralization of economic and political control, unless all vestiges of class opposition have been eliminated, this third stage is very much akin to state socialism.

The last and final phase of this societal change will be the collectivist society—the ultimate goal. This time, coersive authority will have disappeared, every one voluntarily participating in the cooperative commonwealth. This will be the real "classless" society, with no wage system, no price, no money—a system based upon the principle of "from each according to his ability, to each according to his need." Thus, cryptly put, will evolve the state known as Collectivism, a state which according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefullness, its mission, its place in history of economic growth of mankind.

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Government's Exhibit No. 1—(Continued)

It is man's ultimate goal. It is the panacea for which he has been striving for untold ages. It is his El Dorado, his Promised Land—his ideal which he is to reach here on this earth now, and not "by and by when you die."

These doctrines have come to the forefront of late more than before because of the conditions we have been facing in the last half dozen years in particular. And no audience needs to be told of the terrible thing these six or seven years of depression have been. It is bad enough in physical suffering but it is worse in mental and spiritual effect. It dims man's hope, it starves man's faith in human institutions it puts fear and dread in hearts. It questions the advisibility of living all-together. The pathetic thing about these years of misery is its mockery of our common sense. In the words of President Roosevelt, "millions are homeless in cities of vacant homes, ill fed before full granaries, ill clothed in the presence of abundance and cut off from the chance to work for the other millions who are suffering for the want of their services." It does not make sense. It is more like the spell of black magic from a fairy book story.

But in this hard-boiled age we can't permit ourselves to be taken up with fairy book stories. We must approach the problems as they face us. We must hack our way out of trouble by our own efforts. No good fairy is fluttering around on the horizon to get us out of the difficulties.

In conclusion, may I say that the choice we are

Government's Exhibit No. 1—(Continued)

asked to make lies before us. If an economic system is to be judged on the basis of a worth-while standard of living for every man, woman and child under it, then we must choose accordingly. On that basis I cannot see any hope for economic planning in Italy, Germany, Japan and other such fascist countries. Nor do I see too much hope for this same economic planning in England, the United States, France and other democratic and pseudo-democratic states. Why? In all these instances unrestrained capitalism is in the saddle, and economic planning for all is wholly inconsistent with, and impossible under, unchecked capitalism. On the other hand, this study and reflection could lead one to conclude that progress, human well being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization.

The sentiment expressed in the following lines of verse seems very apropos: [14]

"Sedition"

By

Edmund Vance Cooke

You cannot salt the eagle's tail,
  Nor limit thought's dominion.
You cannot put ideas in jail;
  You can't deport opinion.

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Government's Exhibit No. 1--(Continued)

If any cause be dross and lies,
Then drag it to the light;
Out in the sunshine Evil dies,
But fattens on the Night.

You cannot make a Truth untrue
By dint of legal fiction.
You cannot prison human view,
You can't convict conviction.

For tho by thumbscrew and by rack,
By exile and by prison,
Truth has been crushed and palled in black,
Yet Truth has always risen.

You cannot quell a vicious thought,
Except that thought be free;
Gag it, and you will find it taught
On every land and sea.

Truth asks no favor for her blade
Upon the field with Error,
Nor are her converts ever made
By threat of force and terror.

You cannot salt the eagle's tail,
Nor limit thought's dominion.
You cannot put ideas in jail;
You can't deport opinion. [15]

United States District Court, Southern District of California, Central Division

No. 126,536

In the Matter of the Petition of SHULIM WIXMAN for Naturalization.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT DENYING PETITION FOR NATURALIZATION.

Upon consideration of the petition for naturalization of Shulim Wixman and of the objections by the Government to the admission of said Shulim Wixman as a citizen of the United States, and after hearing thereon in open court, petitioner being represented by Lee Gallagher, Esq. and Herbert Ganahl, Esq., and the Government being represented by Frank J. Burns, Esq., and upon submission of said petition and cause, the court delivered an oral opinion from the bench, which opinion it was stipulated by petitioner's counsel and by the Government would suffice as the Findings of Fact and Conclusions of Law in such contested naturalization proceeding; and the court having found the facts in such proceedings as stated in said oral opinion from the bench, and having concluded that the petitioner Shulim Wixman had failed to establish his burden of proof of attachment to the principles of the Constitution of the United States and a favorable disposition to the good order and happiness of the United States, and the court having sustained the objections of the Government to the

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admission of said Shulim Wixman to citizenship of the United States, now, therefore, in accordance with the evidence and in accordance with the Findings of Fact and Conclusions of Law heretofore made and entered herein as aforesaid.

It is accordingly ordered that the petition of Shulim Wixman for naturalization be and hereby is denied. Exceptions noted and allowed to said petitioner.

Dated this 7th day of February, 1947.

/s/ PAUL J. McCORMICK,
United States District Judge.

Judgment entered Feb. 7, 1947.
Docketed Feb. 7, 1947.
C. O. Book 41, Page 577.

EDWARD L. SMITH,
Clerk,

By /s/ E. N. FRANKENBERGER,
Deputy.

[Endorsed]: Filed Feb. 7, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Samuel Morris Wixman, also known as Shulim Wixman, petitioner above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the judg-

ment denying the petition for naturalization entered in this action on February 7, 1947.

WIRIN, KIDO & OKRAND,

By /s/ FRED OKRAND,
Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed March 19, 1947.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of the District Court of the United States in and for the Southern District of California:

Appellant hereby designates for the record on appeal in the above matter the entire record which you are requested to prepare.

Said record consists of the following:

1. Petition for Naturalization;
2. Reporter's Transcript of proceedings (orginal and one copy of which is filed herewith);
3. Exhibit 1;
4. Judgment entered February 7, 1947;
5. Notice of appeal;

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6. This Designation.

Dated: April 17, 1947.

WIRIN, KIDO & OKRAND,
By /s/ FRED OKRAND,
Attorneys for Appellant.

Received copy this 17th day of April, 1947.
/s/ RONALD WALKER,
Asst. U. S. Atty.

[Endorsed]: Filed April 18, 1947.

[Title of District Court and Cause.]

ORDER DIRECTING CLERK TO MAKE CERTIFICATION OF NATURALIZATION RECORDS.

It appearing to the Court that the above named petitioner has filed notice of appeal from the order entered February 7, 1947, denying his application for naturalization and that the Clerk is now in the process of making up the record on appeal for certification;

And it appearing further that under section 341(e) of the Nationality Act of 1940 (Title 8, U. S. C. A. 741(e) the Clerk is prohibited from certifying certain naturalization records without an order of Court;

It is ordered that the Clerk of this court issue his certification of the petition for naturalization filed in the above entitled matter for the purpose of perfecting the record on appeal to the United

States Circuit Court of Appeals for the Ninth Circuit.

Dated at Los Angeles, California, this 21st day of April, 1947.

PAUL J. McCORMICK,
United States District Judge.

[Endorsed]: Filed Apr. 21. 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 21 inclusive contain full, true and correct copies of Petition for Naturalization; Government's Exhibit 1; Findings of Fact, Conclusions of Law and Judgment Denying Petition for Naturalization; Notice of Appeal; Designation of Record and Order Directing Clerk to Make Certification of Naturalization Record which, together with copy of reporter's transcript, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $6.60 which sum has been paid to me by appellant.

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Witness my hand and the seal of said District Court this 24 day of April, A. D. 1947.

[Seal] EDMUND L. SMITH,
Clerk,

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

[Endorsed]: No. 11599. United States Circuit Court of Appeals for the Ninth Circuit. Samuel Morris Wixman, also known as Shulim Wixman, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 28, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11599.

SAMUEL MORRIS WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

Appellant herewith designates as his points on appeal, the following:

1. The denial of the petition and the judgment thereon, denies to the appellant his right to freedom of speech within the meaning of the First Amendment to the United States Constitution.

2. The denial of the petition and the judgment thereon by the District Court abridges appellant's right to freedom of thought and freedom of opinion within the meaning of the "clear and present danger" rule.

3. The denial of the petition and the judgment thereon by the District Court is not supported by the evidence.

Dated: April 30, 1947.

WIRIN, KIDO & OKRAND,
By /s/ FRED OKRAND,
Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 2, 1947.

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United States Circuit Court of Appeals for the Ninth Circuit

No. 11599.

SAMUEL MORRIS WIXMAN, also known as SHULIM WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER GRANTING PETITION THAT REPORTER'S TRANSCRIPT OF TESTIMONY BE NOT PRINTED

Upon consideration of the petition of appellant that he be permitted to proceed on this appeal by printing the clerk's transcript, and that the reporter's transcript of testimony be considered in its original form, and of the opposition of counsel for appellee thereto, and good cause therefor appearing, It Is Ordered that said application be, and hereby is granted, and that appellant is permitted to proceed on the appeal herein upon a typewritten reporter's transcript of record, and printed clerk's transcript.

Dated: San Francisco, Calif., June 13, 1947.

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit Judge.

[Endorsed]: Filed June 17, 1947.

No. 11599

IN THE

United States Circuit Court of Appeals
For the Ninth Circuit

SHULIM WIXMAN, Also Known as SAMUEL MORRIS WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday,
March 16, 1948

Before: Mathews, Bone and Orr,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. A. L. Wirin, counsel for appellant, and by Mr. Paul Fitting, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday,
May 4, 1948

Before: Mathews, Bone and Orr,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,599

May 4, 1948

SHULIM WIXMAN, Also Known as SAMUEL MORRIS WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the District Court of the United States for the Southern District of California, Central Division

Before: Mathews, Bone and Orr,
Circuit Judges.

Mathews, Circuit Judge.

OPINION

This appeal is from a judgment denying a petition for naturalization filed by appellant, Shulim Wixman, also known as Samuel Morris Wixman, who was born in Russia on March 25, 1900, and entered the United States under the name of Scholem Wieseman on July 16, 1911. The petition was filed on September 25, 1945, and was denied on February 7, 1947.

The petition was filed pursuant to the Nationality Act of 1940, 8 U.S.C.A. § 501 et seq. Subsection (a)

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of § 307 of the Act, 8 U.S.C.A. § 707, provides that, with inapplicable exceptions, "No person * * * shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is * * * attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Appellant's petition stated: "I am, and have been during all of the periods required by law,[1] attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States." On the ground that appellant was not so attached or so disposed, appellee, the United States, objected to his naturalization.

Pursuant to § 334 of the Act, 8 U.S.C.A. § 734, a final hearing on appellant's petition was had in open court before a judge thereof, commencing on January 24, 1947, and ending on February 5, 1947. The witnesses—31 for appellant and 9 for appellee—were examined under oath before and in the

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[1]Meaning, obviously, the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707.

presence of the court and judge. On the issue as to whether appellant, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707,[2] was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, the evidence was conflicting. There was evidence tending to show that he was so attached and so disposed and evidence tending to show that he was not so attached or so disposed. The court resolved the conflict in favor of appellee and against appellant. Hence the judgment here appealed from.

As required by our Rule 19 (6),[3] appellant, upon filing the record in this court, filed with the clerk a statement of the points on which he intended to rely on the appeal and designated the parts of the

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[2]In this case, the periods referred to included the period from September 25, 1940, to September 25, 1945, and the period from September 25, 1945, to February 5, 1947.

[3]Rule 19(6) provides: "The appellant shall, upon the filing of the record in this court, in all cases, * * * file with the clerk a concise statement of the points on which he intends to rely on the appeal, and designate the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement and designation. The adverse party, within 10 days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; * * * If parts of the record shall be so designated by one or both of the parties, * * * the clerk shall print those parts only; and the court will consider nothing but those parts of the record and the points so stated. * * *"

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record which he thought necessary for the consideration thereof. Three points were stated. Point 1 is that "The denial of the petition and the judgment thereon denies to the appellant his right of freedom of speech within the meaning of the First Amendment to the United States Constitution." Point 2 is that "The denial of the petition and the judgment thereon by the District Court abridges appellant's right to freedom of thought and freedom of opinion within the meaning of the 'clear and present danger' rule." There is no merit in either of these points. The denial of the petition does not, nor does the judgment thereon, deny to appellant his right to freedom of speech or abridge his right to freedom of thought or freedom of opinion. None of these rights is in any way affected by the denial of the petition or the judgment thereon.

Point 3 is that "The denial of the petition and the judgment thereon by the District Court is not supported by the evidence." There is no merit in this point. The denial of the petition and the judgment thereon are supported by substantial evidence—evidence tending to show that appellant, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707, was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States.

This being a naturalization proceeding—a proceeding for admission to citizenship—the court was not required to "find the facts specially," as would

have been required had this been a civil action.[4] The court did, however, indicate its findings in an oral opinion delivered from the bench on February 5, 1947. In that opinion, the court held, and properly so, that appellant had the burden of proving that, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707, he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.[5] The court then stated, in the same opinion, that it did not believe that it could conclude that appellant had sustained his burden of proof. In the judgment, entered two days later, the court stated that it had concluded that appellant had not "established" his burden of proof. Thus, in effect, the court found that appellant, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707, was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States.

Remembering, as we must, that the evidence was conflicting; that the court below had the advantage, which we have not had, of hearing, seeing and observing the witnesses; that appellant's burden of

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[4]See Rules 52(a) and 81(a)(2) of the Federal Rules of Civil Procedure, 28 U.S.C.A. following § 723c.

[5]United States v. Schwimmer, 279 U.S. 644; United States v. Macintosh, 283 U.S. 605; Lakebo v. Carr, 9 Cir., 111 F. 2d 732; Allan v. United States, 9 Cir., 115 F. 2d 804.

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proof was a heavy one; and that doubts were required to be resolved in appellee's favor,[6] we cannot say that the finding was wrong.

Denaturalization cases[7] and deportation cases[8] cited by appellant are not in point here, for this is neither a denaturalization case nor a deportation case.

Judgment affirmed.

[Endorsed]: Opinion. Filed May 4, 1948. Paul P. O'Brien, Clerk.

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[6]United States v. Manzi, 276 U.S. 463; United States v. Schwimmer, supra; United States v. Macintosh, supra.

[7]Schneiderman v. United States, 320 U.S. 118; Baumgartner v. United States, 322 U.S. 665.

[8]Bridges v. Wixon, 326 U.S. 135; Delgadillo v. Carmichael, 332 U.S. 388; Fong Haw Tan v. Phelan, 333 U.S. 6.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11599

SHULIM WIXMAN, etc.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered May 4, 1948.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday,
June 5, 1948

Before: Mathews, Bone and Orr,
Circuit Judges.

ORDER DENYING PETITION FOR REHEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed June 3, 1948, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

June 5
July 5-30
Aug. 5-61
Sep. 5-92
Sep. 4-91

United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-five (45) pages, numbered from and including 1 to and including 45, together with original typewritten reporter's transcript to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 22d day of June, 1948.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No.

SHULIM WIXMAN, ALSO KNOWN AS SAMUEL MORRIS WIXMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

VOL. II

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[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 126,536

Honorable Paul H. McCormick, Judge Presiding.

In the Matter of the Petition of SHULIM WIXMAN for Naturalization

Reporter's Transcript of Proceedings—Filed April 18, 1947

Los Angeles, California

January 24, 1947

APPEARANCES:

For the Petitioner: Leo Gallagher, Esq. and Herbert Ganahl, Esq.
For the Government: Frank J. Burns, Esq.

[fol. 2] Los Angeles, California, Friday, January 24, 1947, 10:00 A. M.

The Clerk: In the matter of Shulim Wixman.
The Court: Proceed.
Mr. Gallagher: If the court please, I would like to associate Mr. Herbert Ganahl in the case with me.

STATEMENT OF COUNSEL

Mr. Burns: In this matter, your Honor, the sole ground of objection urged by the government against the naturalization of Mr. Wixman is that he has failed to establish that he is attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, for the period required by law. Since he filed his petition for citizenship, September 25, 1945, and since his petition was filed under the provisions of Sec. 310 (a) of the Nationality Act of 1940, the period for which he must prove attachment to the principles of the Constitution, and a favorable disposition to

the good order and happiness of this country, is from the 25th of September, 1944.

It is the contention of the government, your Honor, that this man has shown sympathy for and adherence to the principles of Communism, and while most of the things that indicate that sympathy and adherence are matters that took place from the 25th of September, 1944, we regard them as indicative of his present state of mind, and will urge [fol. 3] them after they are established by evidence in opposition to his petition for naturalization.

I would like to call first Mr. Burbank Lewis as a witness.

BURBANK LEWIS, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name is Burbank Lewis?
A. That's right.

Direct examination.

By Mr. Burns:

Q. Where do you reside, Mr. Lewis?
A. Eagle Rock.
Q. Your street address is what?
A. 1323 Rydal Street.
Q. Where were you born, Mr. Lewis?
A. Bismarck, North Dakota.
Q. You are a citizen of the United States then, are you not?
A. I am.
Q. What is your occupation?
A. Retired teacher.
Q. Are you connected now with any teachers organizations of the City and County of Los Angeles, Mr. Lewis?
A. I am.
Q. With which, and in what capacity?
[fol. 4] A. Association of California Classroom Teachers.
Q. How long have you been a member of that organization?
A. I imagine 14 or 15 years.

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Q. During the time that you have been a member of that organization, have you ever met a man named Shulim Wixman, in connection with that organization?

A. Yes.

Q. Was he a member of it?

A. Yes.

Q. Is Mr. Wixman the gentleman sitting on the far side of this table?

A. That's right.

Q. You know him, and recognize him?

A. Yes.

Q. During the time you were both members of this California Classroom Teachers Association, did you and Mr. Wixman ever hold any conversations concerning political matters?

A. No, sir.

Q. Did you ever have occasion to hear Mr. Wixman deliver any speeches to either the Classroom Teachers Association or any other association or group?

A. Once.

Q. Where was that?

A. At one of our legislative dinners.

[fol. 5] Q. One of the legislative dinners of the Classroom Teachers Association?

A. It happened to be a joint meeting of the Classroom Federation and ours.

Q. Do you remember where that dinner was held?

A. No, I can't. It seems to me along about Sixth and Hope or Sixth and Flower.

Q. Somewhere in down town Los Angeles?

A. Yes.

Q. Do you remember the approximate date of that meeting?

A. Not to be definitely sure of it.

Q. Can you approximate the time? Could it be 1935, 1940, or 1945, or what, as nearly as you can remember?

A. I would say between '44 and '46.

Q. As recent as that?

A. I meant '34 and '36.

Q. Sometime between 1934 and 1936?

A. Yes.

Q. Do you remember the subject of Mr. Wixman's address there,—what he talked about?

A. Yes, he said he was going to teach Marxism at the Junior College.

Q. Do you know what Mr. Wixman's occupation was at that time?

A. He was a teacher at the Junior College.

[fol. 6] Q. Los Angeles?

A. Los Angeles.

Q. Which later became the Los Angeles City College?

A. Yes.

Q. Did he elaborate on what he meant by saying he was going to teach Marxism in his classes?

A. He did. We had quite a little talk about it.

Q. Do you remember anything he said there, anything which indicated to you what he was about to teach was actually Marxism?

A. No, I did not know anything about Marxism. I could not say.

Q. He did designate what he intended to teach in his class as Marxism?

A. He did.

Q. Do you know what subject he taught at the Los Angeles Junior College?

A. Not personally.

Q. Did he say, during the course of his lecture, whether he was teaching economics, history, or what?

A. I can't remember.

Mr. Burns: That is all.

Cross-examination.

By Mr. Gallagher:

Q. Where did you say this lecture took place?

[fol. 7] A. At one of our legislative dinners.

Q. Where the conversation took place?

A. It was a speech; not a conversation.

Q. How many people were present?

A. I imagine there must have been 150 or 200 people.

Q. Were these people teachers, or who were they?

A. I suppose most of them were teachers. We probably had a dozen legislators there.

Q. How long did the speech last?

A. Possibly three minutes.

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Q. All you recall is he said he was going to teach Marxism?

A. He used the word.

Q. That is all you recall he said?

A. All I can definitely recall, yes.

Q. Did you know at the time he was a teacher?

A. I did.

Q. Did he indicate he was going to teach this in the City College, where he was teaching?

A. He did.

Q. Did he say anything about teaching any other subject besides Marxism?

A. Not at that time.

Q. Did you ever discuss the subject with him at all?

A. I never did.

[fol. 8] Q. At any time?

A. At any time.

Q. Did you know Mr. Wixman very well?

A. I know him fairly well.

Q. On no other occasion has he ever mentioned Marxism to you, is that right?

A. I had no occasion to take to him about it.

Q. How often have you talked to him?

A. I did not get the question.

Q. On how many occasions have you talked to him?

A. We were associated for a year in a magazine office.

Q. On those occasions he never said anything about Marxism?

A. There was no occasion to talk about anything except the business we had in hand.

Q. Was there any discussion after this speech by him,—were any questions put to him?

A. I don't remember any. We had a full program. We did not have a chance for a discussion.

Mr. Gallagher: That is all.

By the Court:

Q. What was this magazine called?

A. It was a publication of the Association of California Classroom Teachers.

Q. You said at this meeting there were legislators. Did you mean teachers who introduced your legislation?

[fol. 9] A. No, people who had been elected to the Legislature. We were putting on a campaign for Constitutional Amendment No. 11 at that time.

Mr. Gallagher: That is all.

CATHERINE MANTALICA, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Catherine Mantalica.

Direct examination.

By Mr. Burns:

Q. Where do you live, Mrs. Mantalica?

A. 5837 Seventh Avenue.

Q. In Los Angeles?

A. Yes.

Q. Your occupation is what?

A. I am a housewife.

Q. Where were you born, Mrs. Mantalica?

A. Boston, Massachusetts.

Q. You are a citizen of the United States now, are you not?

A. I am.

Q. Did you at any time attend the Los Angeles City College, formerly the Los Angeles Junior College?

A. I did.

[fol. 10] Q. What were the dates of your attendance there?

A. From September, 1937 to June of 1939.

Q. During the time that you enrolled in the school, did you ever enroll in any of the classes of a man named Shulim Wixman?

A. Yes, I was enrolled in economics, in one class of his.

Q. Is this Mr. Wixman the man who is seated at the far side of the table?

A. Yes, it is.

Q. Who conducted these classes?

A. Yes, it is.

Q. That was the economics class?

A. That was the class designation.

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Q. Do you remember the teachings of Mr. Wixman during the time you were in his economics class?

A. His teachings were generally along the line of economics. However, at times I felt he departed unnecessarily from the subject.

Mr. Ganahl: We object to what she thought he departed from, as a conclusion.

The Court: She will be required to state, so far as she can, the substance of what was said.

Mr. Burns: I am asking Mrs. Mantalica the grounds of her belief.

[fol. 11] Mr. Ganahl: She might not have liked the man.

The Court: Don't make any observations, gentlemen. I don't permit that in my court room. You make your objections, and don't make any arguments, unless the court asks that they be made. That applies to all of you.

The Witness: Your Honor, may I rephrase my answer?

The Court: Surely.

A. I was asked what his teachings were. His teachings were generally along the line of economics.

Mr. Gallagher: May I object to the general inferences as to the teaching, rather than stating what was said?

The Court: Have you been a witness before, Mrs. Mantalica?

The Witness: No, your Honor.

The Court: In court we have to adhere to what is called legal evidence, and mental processes are not legal evidence. Confine yourself to what was said, instead of stating your observation as to what he said. You may proceed.

Mr. Burns: Let me rephrase the question, Mrs. Mantalica.

By Mr. Burns:

Q. What I asked you was, if you have any recollection now of any of the things that Mr. Wixman said during the time that you were in his class.

A. Yes, sir, what I was trying to convey was, as well as the general line of economics, at times he brought in a discussion of religion and references to religion, particularly, as I said in my statement, he made references in a man-

[fol. 12] ner so as to ridicule religion.

Q. Are you able to remember now any particular things he said about religion, which struck you as ridiculing it?

A. Yes, I remember one or two particular instances. One was some slurring remark in reference to the Pope.

Mr. Gallagher: I am going to object to that as a conclusion on her part. State the language used.

The Court: If you can remember what he said, you should do so.

The Witness: I am sorry, I can't do so.

Mr. Ganahl: I offer the further objection that this entire line of questions seems to me incompetent, irrelevant and immaterial.

The Court: Not necessarily. A teacher has certain latitude, of course, especially in teaching economics, but the latitude may transcend the line of allegiance to the principles of Americanism, because it is not permitted even in schools.

The Witness: Your Honor, may I tell one particular instance that I recall most specifically?

The Court: Yes.

The Witness: In one instance—I don't know it was brought into teach ing economica, but it was, nevertheless,—Mr. Wixman made reference to the practice of the Catholic laity receiving indulgence in exchange for gifts of money to [fol. 13] the clergy of the Catholic Church. At the time I put in an objection to the matter, because I felt he was presenting, not facts, but a conclusion of his.

By Mr. Burns:

Q. Do you remember any other particular things Mr. Wixman said on the subject of religion?

A. No, I can't remember anything of especial importance.

Q. Do you remember what his economic teachings were, that is to say, did he advocate forms of government, or talk about forms of government at all, in connection with teaching economics?

A. No, I could not say that he did.

Q. Did he ever urge collectivism in economic science?

Mr. Gallagher: I object to this line of leading questions.

The Court: Overruled.

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By Mr. Burns:

Q. Did he ever urge collectivism against individualism?

The Court: Wait a minute. She has not answered the question.

The Witness: What was the question, please?

By Mr. Burns:

Q. Did he ever urge collectivism in his classes?

A. No, sir, not that I remember.

Mr. Burns: That is all.

[fol. 14] Cross-examination.

By Mr. Ganahl:

Q. You are sure this was in the class on economics of the City College?

A. Yes.

Q. That was during the years 1937 to 1939?

A. Yes.

Q. How many lectures of Mr. Wixman did you attend, approximately?

A. I attended the full course, except when I was absent once or twice.

Q. Was that over a period of two years?

A. No, the economics class took in one term.

Q. That is all you remember of the courses?

A. Yes.

Mr. Ganahl: That is all.

Doty May Jenkins, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Doty M. Jenkins.

Direct examination.

By Mr. Burns:

Q. Where do you live, Mrs. Jenkins?

A. 4212 West Slauson, Los Angeles.

[fol. 15] Q. You were born where?

A. Salt Lake City, Utah.

Q. Are you a citizen of the United States?

A. I am.

Q. What is your occupation?

A. Housewife.

Q. Did you at any time attend the Los Angeles Junior College, which became the Los Angeles City College?

A. I did.

Q. What were the years of your attendance there?

A. September, 1939 to January, 1940.

Q. During the time you were studying at the Los Angeles Junior College, did you enroll in any classes conducted by Professor Shulim Wixman?

A. Yes, the economics class.

Q. Was Shulim Wixman, who taught that class, the man seated at the far side of the table?

A. Yes.

Q. Are you able now to recall any of the things Mr. Wixman said from the teacher's platform of the school?

A. I did not get a great deal out of the class. I remember he always stressed collectivism instead of individualism.

Q. Did he recommend any reading to the class along economic lines?

[fol. 16] A. Yes, every week he gave us a list of books recommended for reading. I still have a list of those books.

Q. Do you have the list with you?

A. I don't have it.

Q. Are you able to remember any names of the books on the list, which Mr. Wixman recommended?

A. I don't remember the titles. I could, if I had my list handy.

Q. Are you able to remember some of the writers?

A. Stalin was one of the authors, and there were a great many. I haven't looked at them for so long I don't remember right now.

Cross-examination.

By Mr. Gallagher:

Q. You say he advocated collectivism?

A. Yes, sir.

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Q. What did he say?

A. He said when he was a boy, working in a factory, that he worked at one little item all the time. He thought that was the way it should be done, and there was greater success,—you could succeed faster, and get more work done by everyone working together, and doing a small part.

Q. Were you in the same class with Mrs. Mantalica?

A. No, sir.

Q. You did not know her?

[fol. 17] A. No.

Q. How long a list of books did he give you to read?

A. Every week we had, I would say ten or so books.

Q. Were those lists he would give you of books typed up?

A. No, he wrote them on the board, and they were recommended for reading.

Q. Do you recall any of them?

A. I don't right now. I have got the names.

Q. Was Charles Beard one of them, do you remember?

A. The name sounds familiar.

Q. Did you read any of those books?

A. No, sir.

Mr. Gallagher: That is all.

Redirect examination.

By Mr. Burns:

Q. The name Charles Beard as the author of one of the books Mr. Wixman recommended sounds familiar. That might be one of the books?

A. That's right.

Q. You are able to remember he recommended a book by Mr. Stalin?

A. Yes.

Q. Is that Mr. Joseph Stalin, head of the Russian State at this time?

[fol. 18] A. That's right.

Q. Did he ever recommend a book by Mr. Lenin?

A. Yes. I had forgotten.

Mr. Gallagher: I object to that as leading.

The Court: Overruled.

By Mr. Burns:

Q. Did he ever recommend a book by John Stryke? Does that sound familiar?

A. Yes.

Q. By Beatrice Webb, does that sound familiar as a book he recommended?

A. Yes, I recall that name.

Q. Can you recall whether or not the book, The Russian Revolution, by W. H. Chambers was recommended?

A. Yes, I believe that book was on the list.

Mr. Burns: That is all.

Recross examination.

By Mr. Gallagher:

Q. Did this list contain the names of books by recognized American economists?

A. Not that I recall. We had a certain study every week which we outlined, and learned about the profit and loss system, and things of that nature. Those were the books that were at the school.

Mr. Gallagher: That is all.

By the Court:

Q. Mrs. Jenkins, what was the method of instruction? [fol. 19] Was it the lecture system, or the text book system?

A. The lecture system.

Q. You had no text books?

A. I believe we did have text books, but we did most of the research in the library from various books.

Q. The applicant would assign certain reading, which the class was expected to do?

A. Yes.

Q. Those were prepared when the lecture was given?

A. Yes.

Q. What was the method of testing the efficiency of the study?

A. Every two or three weeks we had a test of one or two questions we had to discuss during that period.

Q. Was that a written test?

A. Yes, a written test.

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By Mr. Burns:

Q. Did Mr. Wixman ever make any offers to individuals, or to the whole class, to join any associations of any kind?

A. No.

Q. Any student groups, or anything?

A. Not that I recall.

Q. Going back to your earlier answer regarding teaching collectivism, you explained to Mr. Gallagher that as [fol. 20] being a manner of teaching by all working together we can achieve more than if we were working separately, or words to that effect?

A. Yes.

Mr. Ganahl: We object. That was not what she said.

The Court: I heard what she did. What is the use of telling the court what she said?

Mr. Ganahl: Counsel put the words in her month.

The Court: Proceed.

By Mr. Burns:

Q. When you made that statement, that Mr. Wixman had taught collectivism, what did he say?

A. I don't recall right now.

Q. Did he ever say anything about forms of government, and political matters?

A. He did, but I don't recall what he said.

Q. Did he say what types were the most economically favorable?

Mr. Gallagher: I object to that upon the ground that it is leading. The young lady ought to be able to tell what he said, without being coached.

The Court: I think she should. That is a leading question.

Q. What were the ages of these students that were attending that class?

A. I would say about 17 to 20.

[fol. 21] Q. Were they graduates of high school?

A. Yes.

Q. Was it the freshman year in college?

A. Yes, this particular course was.

Q. Was he the only teacher of economics in that section?

A. No, I believe there were two or three others.
Q. That is all.

EILEEN WOOD, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.
A. Eileen Wood.

Direct examination.

By Mr. Burns:

Q. Where do you live, Mrs. Wood?
A. 3429 Division Street.
Q. Where were you born?
A. Los Angeles, California.
Q. You are, and always have been a citizen of this country?
A. I have been.
Q. What is your occupation now?
A. Housewife.
Q. Have you ever attended the Los Angeles Junior [fol. 22] College or the Los Angeles City College?
A. The Los Angeles City College, yes.
Q. What were the dates of your attendance?
A. September, 1938 to June, 1940.
Q. During the time that you were in attendance at the Los Angeles City College did you ever enroll in any classes taught by Professor Shulim Wixman?
A. No, sir, I did not.
Q. Did you know Professor Shulim Wixman on the campus?
A. Yes, I did.
Q. Is that the same man as the gentleman seated at the other end of the table, the petitioner for citizenship?
A. Yes, sir, it is.
Q. Did you belong to any societies, or any associations, student clubs, or anything of that sort, at the Los Angeles City College, at which Professor Wixman was either a member or a faculty sponsor?
A. He was the faculty sponsor of the Iota Delta Pi, which was an honor society to which I belonged.
Q. Any other societies?

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A. No.

Q. Did Mr. Wixman, as faculty sponsor of this society, from time to time address members of the society, and give speeches?

A. I recall just one occasion. I remember a speech of [fol. 23] his. It was at the installation, which was held at his home. He gave a speech at that time; a very short one.

Q. Do you remember about when that occurred?

A. It would be about the latter part of 1939, between September and December.

Q. Do you remember anything he said on the occasion of that speech?

A. I recall that he mentioned that he was attending some kind of an evening school which taught Communism, and he invited any who wished to attend to come along with him?

Q. Was that his word for what the school taught? Did he say that it taught Communism?

A. I hesitate to say that it was Communism. I hate to use the word, because I don't know much about it. I don't believe I can be definite there at all.

Q. What I am asking is, Mrs. Wood, whether or not you can recall the use by Professor Wixman of the word Communism, or communistic, in connection with the school.

A. Yes, I can. I can't state he said that it was that kind of school, but he said it was a communistic school.

Q. Did he designate the school with some kind of term such as that last word?

A. Yes.

Q. He invited the students to enroll in that school?

A. Not enroll, but to visit, I believe would be a better [fol. 24] word.

Q. Can you remember the particular school he invited you to visit?

A. No, I do not.

Q. Did you ever attend the school he invited you to visit?

A. No.

Mr. Burns: Thank you, Mrs. Wood. That is all for me.

Cross-examination.

By Mr. Ganahl:

Q. Mrs. Wood, do you recall on that occasion you are telling us about at one of the meetings of your organization,

that the tenor of his remarks to the students was that you should not only become acquainted with Communism, but with all the other isms going about, Fascism, ideology, and so forth, which was going around?

A. No, I couldn't say that. He was attending the school, and he suggested we come along and visit the school.

By the Court:

Q. You weren't studying economics in his class?

A. No, I had no classes from him.

Q. You were majoring in English?

A. Taking history.

Q. Was it in some historical discussion he told the group he was attending a communistic school?

[fol. 25] A. No, this was not a history class. It was just the initiation for the new members of the history society.

Q. Do you recall how it happened he merged into that subject?

A. Except as sponsor of the organization. He was giving the speech, naturally, as the sponsor of the organization, and that was just about all that was said in the course of his speech.

Q. Just what did he do that indicated that he was inviting the students to go to this school?

A. He issued a specific invitation. I know that it was so, because he succeeded in getting one of the young men to attend it. I don't know what the young man's name was.

Q. This was in a formal address to the entire body, the group assembled there at his house?

A. Yes, if you would call an initiation formal.

Q. How many people were there?

A. I would say perhaps 20; maybe a little less.

Q. Was this after the initiatory ceremonials, or before?

A. That I can't say.

Q. Was there any other speaker there that day?

A. No.

Mr. Burns: I will call Mr. Chester Brown.

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[fol. 26] CHESTER A. BROWN, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Burns:

Q. State your name.
A. Chester A. Brown.
Q. Where do you reside, Mr. Brown?
A. 2278 Edendale Place, Los Angeles.
Q. Where were you born?
A. Methow, Washington.
Q. You are a citizen of the United States?
A. Yes.
Q. What is your occupation at this time?
A. Civil Service employee of the City of Los Angeles, Powerhouse and Station operator.
Q. Did you at one time attend the Los Angeles City College here in the city?
A. Yes, sir, I attended there from September, 1939, to December, 1942, I believe it was.
Q. During the time that you were in attendance at that school, did you ever enroll in any courses taught by Professor Shulim Wixman?
A. No, sir.
Q. Did you ever become acquainted with Professor Shu-
[fol. 27] lim Wixman during the time you were attending that school?
A. Yes, sir, he was the sponsor of the Iota Delta Pi History Organization Society, of which I became a member.
Q. Was that Shulim Wixman the same gentleman as the one seated at the table?
A. Yes, sir.
Q. Where — the meetings of this history society, Iota Delta Pi, held?
A. The meetings were held on the school property. The initiations, I believe, were regularly held outside of the school.
Q. Were there any functions or initiations, or seminars, —any functions whatever, held at the home of Professor Wixman?

A. Yes, sir, the first initiation that I went to was either December, 1939, or January or February, 1940.

Q. That was held at his home?

A. At his home, yes, sir.

Q. Did Professor Wixman make any talks at that time, in December, 1939, or January or February, 1940,—did he address the members of the Society?

A. After the initiation, which was nothing out of the ordinary, I can't remember his making any special speeches to the group as a whole.

Q. Was he the faculty sponsor of the history society at the time that you joined it?

[fol. 28] A. Yes, sir.

Q. Did you ever hear him, in connection with that society, make any speeches, addresses, or even general statements to members of the society regarding political matters?

A. Well, it depends on the definition of politics. I mean, I know that he objected to the authorities placed over him in the school. Would that be politics?

Q. I am not referring, Mr. Brown, to any school politics, but rather to matters of the body politic, forms of government, and things of that sort.

A. No, sir.

Q. Did he ever recommend, in your hearing, any other associations or societies of any kind?

A. No, sir.

Q. Any schools?

A. No, sir.

Q. That is all, Mr. Brown, from me.

Mr. Gallagher: No cross-examination.

Roy F. Spaulding, Jr., called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Roy S. Spaulding, Jr.

[fol. 29] Direct examination.

By Mr. Burns:

Q. Where do you live, Mr. Spaulding?

A. 1015 West Coolidge Drive, San Diego.

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Q. You were born where?

A. Los Angeles.

Q. You are a citizen of the United States, are you not?

A. Yes.

Q. What is your occupation now?

A. Engineering clerk.

Q. Did you at any time attend the Los Angeles City College?

A. I did.

Q. What were the dates of your attendance there?

A. From January, 1938 until June, 1940.

Q. During the time that you enrolled in the college, did you ever take any of the courses taught by Professor Shulim Wixman?

A. Yes, economics.

Q. Is the man seated at the other table, Shulim Wixman, the one who taught the economics course you attended?

A. Yes.

Q. Do you remember during what term you attended his economics course?

A. It was during my first year at college.

[fol. 30] Q. Did you attend these classes for a year, six months, or what?

A. I believe it was six months, economics.

Q. One semester?

A. Yes.

Q. Are you able now to recall any of the things he said in those classes?

A. Yes, I can recall a general impression of his statements.

Q. Are you able to recall what he said with regard to political and economic matters during those classes?

A. Yes, he frequently made reference to socialistic doctrines, communistic doctrines, and doctrines of that type of economic theory, and made frequent references to books of that nature which he thought would be good reading for the class.

Mr. Ganahl: I did not hear that.

The Court: Read it.

(Answer read by the reporter.)

By Mr. Burns:

Q. Are you able now, Mr. Spaulding, to recall the names of any particular books he recommended?

A. Yes, Das Kapital, by Karl Marx, and the writings by Beatrice Webb, are two that stand out chiefly.

Q. In speaking of socialistic and communistic theories of government, I believe you phrased it, do you recall [fol. 31] whether or not he mentioned those theories favorably or unfavorably?

A. He was very partial to——

Mr. Gallagher: I object to that as calling for a conclusion.

The Court: Overruled.

The Witness: I did not get the question.

The Court: Read it, please.

(Question read by the reporter.)

A. Well, my impression of it was that his attitude toward it was always favorable, that is, the statements that he would utter were invariably favorable to it.

By Mr. Burns:

Q. Do you recall his teachings on capitalism during those classes?

A. Yes.

Q. Was he favorable or unfavorable towards capitalism?

A. The only references I remember in reference to capitalism were chiefly socialistic doctrines of different natures, and the comparisons were always unfavorable to capitalism.

Q. Did he ever attempt to predict the span of life that capitalism had left?

A. I recall one remark that he made of that nature, yes. I can't remember the particulars of it, but it was made.

Q. What did he say about that? Did he predict the end of capitalism, say it would go on forever, or what?

A. He made the remark that he thought it was just about [fol. 32] dead, and people were getting smarter as time went by, and as they did they would come to a more socialistic point of view.

Q. Do you recall his mentioning the subject of religion?

A. I can't remember any particulars, but on several occasions he would make slandering remarks in a sly manner against God.

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Mr. Ganahl: I object to that as being a pure conclusion.
The Court: Yes. What do you mean by a sly manner?

A. His phrases were cleverly worded in order to convey an impression, but still not to use a blunt term that he could be pinned down on.

Q. Do you recall any of those incidents where you received that impression from what he said?

A. I don't recall a particular case.

Q. Can you recall the substance of any of the statements which he made which led you to form that conclusion you have expressed?

A. No, I can't remember particularly. It has been a long time, but the impression stayed in my mind. I know it was made.

Q. It did not stay there very indelibly, did it?

A. Do you mean the impression?

Q. Yes.

A. Yes.

Q. What did he say?

[fol. 33] A. I can't remember the particular remarks he made.

Q. I don't mean the specific remarks, but the substance, if you can't remember specifically.

A. I would not want to try and say; it's been too long a time.

Mr. Burns: That is all.

Cross-examination.

By Mr. Gallagher:

Q. You mentioned Das Kapital by Marx, a book on capital.

A. A book on capital by Karl Marx.

Q. And a book by the Webbs.

A. Sidney and Beatrice Webb.

Q. Did he give you a written list of books?

A. I believe he did, but I wouldn't want to say.

Q. Do you recall any other books he gave?

A. I would not want to say. There were others along the line of economics that were given to us either verbally, or in writing, It has been too long ago. I would not want to say.

Q. Isn't it a fact that he gave a list of books which had works supposed to cover the whole field from a different point of view?

A. Yes, there were books on the general subject of economics, but his references in the classroom gave the impression that the subject of economic philosophy was the [fol. 34] big subject, so far as economics was concerned. It was emphasized in his statements, in recommending certain types of reading to the class.

Q. From all the different books, pages so and so and so of this book, and pages so and so of that book?

A. I don't believe he ever made any particular reference to any particular pages or chapters in the books. The books were recommended as books.

Q. Did you read those books?

A. I read many of them, yes.

Q. Did you read Das Kapital?

A. I read part of it.

Q. Or the Webbs' books?

A. I read a part of them.

Q. What did he say specifically that led you to believe that he was favorable to Communism and Socialism?

A. I recall one, He referred to a man, for instance, seeing a truck going down the street wth a red flag on back. It [fol. 35] had a load of pipe or lumber on it, and that the newspapers, particularly the Hearst newspapers, would jump at the conclusion that the truck driver was a dirty Red. This was in a manner so as to give the idea of a person, who would be foolish enough to believe that it was designed to make the student believe, after all, the word "Red" was not such a bad word, and maybe we ought to check into it a little bit and make up our own minds. And statements of that nature and others that I can't recall the particular words that he used.

Mr. Gallagher: That is all.

Mr. Burns: I would like at this time to call Professor Cruse.

Belford M. Cruse, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please?

A. Amos Belford M. Cruse.

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Q. Where do you live, Professor?
A. 2001 North New Hampshire Avenue.
Q. Where were you born?
A. I was born in Dorchester, New Jersey.
Q. Are you a citizen of the United States?
A. I am a citizen of the United States.
Q. Your occupation at this time is what?
A. My occupation is teacher.
[fol. 36] Q. At what school are you teaching?
A. I am teaching at the Los Angeles City College.
Q. How long have you been on the faculty there?
A. I have been there since September, 1929.
Q. Do you have any title in the college faculty?
A. I am chairman of the department of social sciences.
Q. How long have you held that post?
A. I have held it since 1929.
Q. That was the time the school started?
A. That was the time the school started.
Q. During the time you have held that post, was there on the faculty of the school there, and in your department, a professor named Shulim Wixman?
A. There was an associate instructor by the name of Shulim Wixman.
Q. Is that the gentleman seated at the other table?
A. That is the gentleman.
Q. During what period did he teach there?
A. He taught there from, I believe—he was entered in the history of the college, I believe, in 1929, until the time of his withdrawal. The exact year I don't know. Possibly about four years ago, I would guess.
Q. Did he leave four years ago?
A. Yes.
Q. During the time that he was instructor there at the [fol. 37] college, you were his superior, were you not, and the head of the department?
A. As the head of the department I have certain responsibilities which occasioned my visiting his classroom.
Q. Have you sat through his lectures and listened to them from beginning to end?
A. I have been at his lectures possibly for half an hour, I would say. I don't recall having stayed there through for a complete lecture.
Q. During the time that you were in the classroom, did you ever hear him talk about political and economic matters,

especially with regard to forms of government, at any time while you were in there?

A. I recall no such occasion.

Q. Did you ever have any conversations with Mr. Wixman concerning the matter of his teaching?

A. Naturally, as the chairman of the department, it was my duty to inquire into the subject matter.

Q. Did you ever have any general conversations with him, apart from your position as chairman of the department,—just ordinary conversations, talking about political and economic matters?

A. You would naturally expect two men in the same college, the same department, out of classroom occasionally would talk about things of the present moment.

[fol. 38] Q. Do you recall any of the views expressed by Mr. Wixman in any of his talks with you?

A. There had always been, I suppose, a difference of opinion concerning the so-called ideology of Mr. Wixman and myself, and it is true that we have talked over the relative merits and advantages and disadvantages of various political and economic systems.

Q. Did you ever talk about Communism?

A. Yes, we have talked about Communism.

Q. Did Mr. Wixman express any views about that?

A. Yes, Mr. Wixman expressed some views, but I expressed some views too.

Q. As to Mr. Wixman's views about Communism, were they favorable or unfavorable, as you remember them?

A. As a general principle I felt that Mr. Wixman rather favored the ideology of Communism.

Q. Is there anything that you can recall that led you to feel that?

A. There is nothing other than the general opinion you get from discussing the subject with any individual.

Q. Do you believe that Professor Wixman might actually have been a Communist, either a member of the party, or an adherent of the views of the party?

A. There was no evidence that I had which would indicate that he was a member of the Communist party, unless [fol. 39] it be his association with the National Student League, or American Students Union, as the case might have been. The names have changed from one year to another, and he held frequent conferences with students who

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were known members of the National Students League, and known Communists.

Q. Did you ever attend any of those conferences or meetings with students?

A. No, I never attended one of those meetings.

Q. Were you ever present where one was held?

A. No, I was never present where one was held, that is to say, on the inside?

Q. Yes.

A. No.

Q. Were you ever on the outside of any of those meetings?

A. At one time I was at a meeting on the outside. I cannot say it was a Communist meeting. It was just a matter of circumstances which led me to believe it was a Communist meeting.

Q. Were you able to hear anything that was said?

A. No.

Q. Were you able to hear anything at all from the meeting?

A. No, all I heard were the preliminaries before the meeting.

Q. I don't understand that.

[fol. 40] A. I had heard that some visitor from Russia had landed here on the West Coast, and was to be entertained at the home of Mr. Wixman, and that on this particular occasion Mr. Wixman's son was to supply the music. Specifically, it had been told me that he had been practicing the playing of Internationale. With one of my colleagues I drove over in front of his house, and there parked, and at the time there were certain guests arriving, and there was a playing of the piano, and it might have been the Internationale, or some other selection that I did not know, because I do not know the Internationale.

Q. And you don't know it now?

A. I don't know it now.

Q. If you were not able to remember the music, you would not know whether it was the Internationale or not?

A. I would not know.

Q. Did Mr. Wixman ever apply to you for permission to use the campus facilities, halls, or anything like that, for the purpose of holding any meetings?

A. Not to the best of my knowledge.

Mr. Burns: That is all.

Cross examination.

By Mr. Ganahl:

Q. Professor, in these discussions, with Mr. Wixman in relation to various events, they pertained to both the domestic field and the foreign field, didn't they?

[fol. 41] A. They did.

Q. What year was this?

A. It was no particular year. It was possibly over a period of several years we discussed such matters.

Q. What is your earliest recollection?

A. I have no earliest recollection with respect to that.

Q. Did you have any discussions with him along in 1938 and 1939?

A. It's possible.

Q. 1940?

A. I couldn't say.

Q. 1941?

A. I couldn't answer that question.

Q. Were you gentlemen of the same political faith here in this country?

A. I know not at all what the political faith of Mr. Wixman is. I know we had a very definite and different opinion concerning the teaching of the subject matter of the principles of economics.

Q. When you attended his lectures as an observer, and his superior, to see what was going on, there was nothing being taught there that you would have any objection to?

A. You would not expect, would you, if the head of the department went in to supervise or listen to the teaching,—would you expect a man with a difference of opinion to go on [fol. 42] and expound the theory of Communism?

Q. While you were there, he didn't know you were coming before you came?

A. No, he did not know I was coming.

Q. You just came in unexpectedly?

A. That is correct.

Q. During the time that you came, during these periods, there was nothing, so far as you were concerned, that was untoward going on, is that correct?

A. That is correct.

Q. You were also aware, were you not, of the books that were recommended for reading to the students?

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A. Very much aware, because the students came and reported such matters to me.

Q. Were any of those books that were recommended for reading by Mr. Wixman in his various classes objected to by you?

A. I would have you understand it is quite possible I have recommended the reading of the same books to my own students, but with a different emphasis.

Q. You would recommend the reading of Das Kapital?

A. I have not only read it; I have quoted from it.

Q. You have no objection to a teacher saying to his students that they should read it?

A. Not that. It's from the emphasis he puts on it. If [fol. 43] the professor comes out and recommends it as his own way of life, I take objection to it.

Q. Did you have any discussion with Mr. Wixman as to the emphasis he placed on his recommended reading?

A. Oh, yes.

Q. Did you have differences of opinion on that too?

A. I would say we had a difference of opinion in the way we would approach those readings.

Q. It was only a matter of approach or technique, is that correct?

A. No, more than that,—more than a matter of approach or technique.

Q. What was there more, for instance?

A. The students came and complained to me that he was teaching them Communism. In order to find out, I would ask a student, for instance, to join an organization of which Mr. Wixman was reputed to be the sponsor. He made certain reports to me that confirmed me in my ideas.

Q. Any of the former students who testified here this morning?

A. No. I can supply the name of the student, however.

Q. Just the years in which these things happened you don't know, do you?

A. No, I don't know the exact year.

Q. Would you give me the name of the student?

[fol. 44] A. Is it necessary for me to give the name?

The Court: You volunteered to do it, Professor.

A. The name of the student was Sidney Chapman.

By Mr. Ganahl:

Q. He lived in your home with you?
A. He did not. He was a student in one of my classes.

By the Court:

Q. A son of Charles Chaplin?
A. I couldn't say. I think not, however. I think his father is a merchant.
Q. I believe there was one of the boys named Sidney Chaplin.
A. It is quite possible, but this was a student at the City College.
Q. The only reason I asked you to disclose that was because you volunteered to do it.
A. Yes.

By Mr. Ganahl:

Q. The meeting you attended, where you heard the music, you do not know whether it was the Internationale, or something else,—was there anything else at that meeting objectionable in any way?
A. Not so far as I was concerned, I was only on the outside.
Q. You did not go in?
A. No, I was not invited in.
Q. As I understand it, this was for the entertainment of some person?
[fol. 45] A. That was my understanding. I went only to check.
Q. Did you talk to Mr. Wixman about it?
A. Mr. Wixman never knew it until this minute.
Q. What did you go over there for then?
A. Have you ever gone to Pershing Square?
Q. If you want to argue with me, I have been to Pershing Square.
A. I went over to see just what was going on.
Q. You were not invited to go over?
A. I was not.
Q. Did you ever discuss with Mr. Wixman the nature of the meeting going on there that night?
A. I never mentioned to Mr. Wixman that I was over there.

Mr. Ganahl: I think that is all.

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Redirect examination.

By Mr. Burns:

Q. Did the school have an official list of recommended reading for students?

A. The school has no recommended reading list, to the best of my knowledge, for any class.

Q. Did the economic and social science faculty ever get together as a group and set up a recommended list that each man would give to his students?

A. That has been entirely up to the individual in-
[fol. 46] structor.

Recross-examination.

By Mr. Ganahl:

Q. You were head of the department, and the various instructors would get together and outline a plan?

A. No, that is something still left to the individual instructor.

Q. In other words, you give the instructors freedom of teaching, without attempting to tell them?

A. That is generally true.

Q. If the book was improper, it would be your duty to forbid it?

A. No. For instance, I would like to have you tell me for my information what is meant by an improper book?

Q. I don't know, but the implication has been made that the recommendation of Das Kapital by Marx, and the reading of books by Sidney and Beatrice Webb,—that there was something improper about them?

A. I personally think there is no objection to reading those particular books to get the point of view. In fact, I quote from them; but in the classroom it is a matter of emphasis.

Q. It is a matter of the teacher's own integrity?

A. Very largely.

Mr. Ganahl: That is all.

[fol. 47] By the Court:

Q. This subject of reading matter to freshmen during the times involved, that was left exclusively to the teacher of the class in economics, was it?

A. That was very largely left exclusively to the teacher. He has his own reading list. I have never known but one instance in which there has been serious criticism made concerning the reading list. No one here is concerned with that.

Q. Do you mean with respect to the activities of the City College?

A. That is correct.

Q. Isn't it the practice in many of the major universities to have collaboration of the faculty for reading matter, before disseminating it to the freshman?

A. It has not been the practice of the City College.

Q. Those students in that section were immature students, just out of high school?

A. Many of them were just out of high school, and some of those students who came to the City College there, their scholastic achievements have not been of the highest order to begin with. In other words, our entrance requirements are below those of other universities. We have been a sanctuary for those students whose education and training have not been too profound.

Q. Did the court understand you to say you had knowledge of the fact that he was associating with known Communists?

[fol. 48] A. My statement, as I recall it,—or I will reiterate, if I may, was that we had at college an organization, nationwide, the National Students League which became the National Students Union, which I now believe is the National Youth Organization for Democracy. Members of that organization, some of them belonged to this organization, and in order to find out the nature of the organization I urged one of the students, whose name I have given, to join the organization, which he did, and he reported to me concerning the organization, who the members were, and what seemed to be the purpose of the organization.

Q. Was it reported that this applicant for citizenship was one of the members of that organization?

A. It was so reported to me.

Q. Was that during the time that he was engaged as an instructor of the youth in the City College?

A. It was, sir.

Q. Were you supervisor of this section in which the applicant for citizenship was a teacher?

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A. I was then, and still am chairman of the department of social sciences in which the applicant was a teacher.

Q. On those occasions when you visited the classroom, that, of course, was in your official responsibility as the head of that section?

A. It was, sir. It is my duty, and the duty of every chair- [fol. 49] man, to visit the classroom, whether the instructor has been favorably or unfavorably reported. It is a part of our routine duties.

Q. Were you able to make the visitation without his knowledge?

A. I would step into the classroom with no greater frequency than that of other members of the department. I would step in to see, in the vernacular of the students, if everything was under control. I would say good morning or good afternoon, and move on.

Q. You would come in openly?

A. Yes.

Q. So whoever desired could see you in the classroom?

A. That is correct.

Q. I believe you used the expression, Professor—if I don't correctly quote you, correct the court—that he withdrew about four years ago from school?

A. I believe that it was about four years ago.

Q. What did you mean by he withdrew?

A. There were certain objections that were brought to bear on Mr. Wixman. It was presumed to be a matter of personal conduct, or something of that nature, from which Mr. Wixman resigned his position as instructor of the City College.

Q. Did that purport to relate to his conduct as a teacher? [fol. 50] A. Yes, sir.

Q. Was his retirement voluntary?

A. It is difficult for me to say, Your Honor, whether an act is voluntary or whether there is undue pressure, when a man has been brought before the court, and a day or two before the trial is to be had resigns from his job as a teacher.

Mr. Ganahl: If the court please, that is quite incorrect. If you wish a statement on that, I will be glad to make it.

The Court: I prefer to get it from the witness.

Q. From that the court gathers that there was some objection being urged to him to the effect that he should or should not continue as a teacher of the faculty?

A. That is correct.
Q. As a result of that he withdrew?
A. That is correct.

By Mr. Ganahl:

Q. Professor, do you know these things of your own knowledge?
A. Many of them of my own knowledge.
Q. The matter of withdrawal, and the charges that were brought, do you know that of your own knowledge?
A. I believe there are some people right here who were on the stand this morning——
Q. I asked you what you know.
A. I know as well as I can, from the statements and the [fol. 51] reports of the young women.
Q. You got it——
A. I got it directly from the young women.
Q. You are aware, are you not, that there was an action brought in the Superior Court of this county, in which these various charges were made, and the action was dismissed by the County Counsel, with prejudice?
A. I am aware that they canceled his teaching certificate.
Q. Are you aware also that the main contention developed was that he was not a citizen, and that was one of the requirements of the City College?
A. I was not there at the trial.
Q. That was part of it?
A. That I could not say.

By Mr. Burns:

Q. The withdrawal of the suit by the County Counsel, the suit against Mr. Wixman, was withdrawn following his resignation, was it not?
A. I believe that was the way it was.

By Mr. Ganahl:

Q. It was with prejudice,—the City Counsel dismissed this suit against Mr. Wixman with prejudice, isn't that true?
A. I couldn't say. I was not there. I did not read the testimony.

Mr. Ganahl: That is all.

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[fol. 52] Mr. Gallagher: Some of these witnesses are teachers and I think they ought to be put on now.

Mr. Burns: I have no objection.

Mr. Gallagher: Mr. Wilt.

The Court: This witness is called on behalf of the petitioner, I take it?

Mr. Gallagher: Yes.

Willard H. Wilt, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Willard H. Wilt.

Direct examination.

By Mr. Gallagher:

Q. Tell us what your occupation is.

A. Teacher.

Q. Where do you teach?

A. At the Star King Junior High School.

Q. Did you ever teach with Mr. Wixman at the same place?

A. No, I have not.

Q. Do you occupy a position in the teachers' group independently of being a teacher?

A. Not at the present time.

Q. What was your former position?

A. I was president of the Classroom Teachers Federa-
[fol. 53] tion, in 1940 and 1941.

Q. Do you occupy a position in connection with some teachers' group at the present time?

A. Not an elective position. As the representative for the faculty in the High School Teachers Association.

Q. With reference to the teachers' post in the American Legion?

A. I am manager of the teachers' post in the American Legion at the present time.

Q. How long have you known Mr. Wixman?

A. Approximately 15 years.

Q. Have you visited in his home?

A. I have, yes.

Q. Did you have occasion to discuss Mr. Wixman with persons in the neighborhood?

A. No.

Q. Do you believe Mr. Wixman is attached to the principles of the Constitution of the United States?

A. I do.

Q. Do you believe he is well disposed to the good order and happiness of the United States?

A. I most sincerely do.

Q. Have you any reason to believe that if Mr. Wixman were given citizenship that he would not be a good citizen?

A. No, sir, I have no reason whatever.

[fol. 54] Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Have you ever discussed the Constitution of the United States with Mr. Wixman?

A. I have not, but I have never heard him speak ill of the Constitution of the United States in any instance. I had no occasion to discuss the Constitution of the United States.

Q. Have you ever discussed political and economic matters with him at all?

A. My contact with Mr. Wixman was in the teachers' organization or committee work. We were not discussing political and economic matters at all.

Q. In other words, you had no opportunity, no occasion whatever, to discuss the matter of his attachments to the governmental forms, or anything of that sort?

A. No.

Q. Either this one or any other?

A. No.

Mr. Burns: That is all.

JOHN H. SWAN, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. John H. Swan.

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[fol. 55] Direct examination.

By Mr. Gallagher:

Q. Mr. Swan, what is your occupation?

A. Classroom teacher at the present time; formerly superintendent and high school principal.

Q. With — organizations are you now connected?

A. American Federation of Teachers, and secretary or adjutant of Schoolmasters' Post 448, Los Angeles District 17, Department of California.

Q. What organization?

A. Schoolmasters' Post, Los Angeles.

Q. Of the American Legion?

A. Of the American Legion; charter member of the post.

Q. Do you know Mr. Wixman?

A. I do.

Q. How long have you known him?

A. Approximately 16 to 17 years.

Q. Have you visited in his home?

A. I have.

Q. Do you know his friends?

A. Yes.

Q. Do you have mutual friends?

A. Yes, sir, I know his son very well. His son was a student of mine, an outstanding student, probably the most outstanding I have ever taught.

[fol. 56] Q. Do you believe Mr. Wixman is attached to the principles of the Constitution of the United States?

A. I certainly do.

Q. That he is well disposed to the good order and happiness of the United States?

A. I certainly do.

Q. Has he ever said anything to you, or in your presence, which led you to believe he would not be a good citizen?

A. No, sir. Furthermore, his boy, in class for three years, never signified or indicated any such attitude as you have indicated. It was always the affirmative—favorable to the United States of America.

Cross-examination.

By Mr. Burns:

Q. Did you ever discuss the Constitution of the United States with Mr. Wixman?

A. I have not, but I have been at meetings where it has been discussed.

Q. But he did not discuss it?

A. No, he offered no particular opinion.

Q. Did he ever discuss forms of government, or economic systems?

A. Not publicly.

Q. Privately?

A. We exchanged ideas.

[fol. 57] Q. Have you ever gone into the matter to any extent?

A. Not directly.

Q. Did he ever express an opinion about Communism to you?

A. What do you mean by an opinion,—favorable or unfavorable?

Q. Favorable or unfavorable, either.

A. Neither one.

Mr. Burns: That is all.

Sheridan P. McCann, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Sheridan P. McCann.

Q. Where do you live?

A. 116 North Catalina, Los Angeles.

Direct examination.

By Mr. Gallagher:

Q. Mr. McCann, what is your occupation?

A. School teacher.

Q. What organization are you connected with?

A. I belong to the Association of Teachers' Organization of Los Angeles, and also to the Schoolmasters' Post of the American Legion.

Q. Do you know the petitioner here, Mr. Wixman?

[fol. 58] A. I do.

Q. How long have you known Mr. Wixman?

A. For ten years at least.

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Q. When you say you know him, will you tell the court how intimately you know him?

A. When his boy was a little youngster my wife taught him at the Alexandria Avenue School. In that way we became acquainted. At the present time Mrs. Wixman teaches at the same school that I did, so naturally we are acquainted, quite well acquainted.

Q. During the period that you have known Mr. Wixman, has he ever said or done anything that led you to believe that he was not attached to the principles of the Constitution of the United States?

A. No, never at any time.

Q. Or that he was in any way not well disposed to the good order and happiness of the United States?

A. No, never.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Have you ever discussed the Constitution of the United States with him, Mr. McCann?

A. No, I have not.

Q. Did you ever talk about political and economic mat-
[fol. 59] ters?

A. No, I never did.

Q. You never discussed Communism or other forms of government?

A. No.

Mr. Burns: That is all.

Alice Strawn, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The clerk: Will you state your name, please?

A. Mrs. Alice K. Strawn.

Direct examination.

By Mr. Gallagher:

Q. Will you state your name?

A. Mrs. Alice K. Strawn.

Q. What is your occupation, Mrs. Strawn?

A. Retired teacher.

Q. Have you had any connection with the Teachers' Federation?

A. Yes, I was twice president of the local Classroom Teachers' Federation, and one year was president of the State Association.

Q. Do you know the petitioner, Mr. Wixman?

A. I do.

Q. How long have you known him?

[fol. 60] A. About fifteen years.

Q. How close has that relationship been?

A. We have worked together in the same local organization and state organization. We went in the same automobile to the National Association at Portland, and I have been associated with him in teachers' affairs. I was at the same dinner that Mr. Cruse spoke of, and did not hear the word "Marxist" spoken in his home. He has been in my home, and I never heard him use the word "Communism" except when this case began, and he said, "What do you think they are trying to accuse me of? Being a Communist."

Q. When you visited his home, or at any other time, have you discussed current events?

A. Yes.

Q. Did he at any time indicate that he was opposed to the American system of government?

A. Never.

Q. Did he ever say anything in your presence that led you to believe that he was not attached to the principles of the Constitution of the United States?

A. Never.

Q. Or not well disposed to the good order and happiness of the United States?

A. Never.

Mr. Gallagher: Cross examine.

[fol. 61] Cross-examination.

By Mr. Burns:

Q. Did you ever discuss the Constitution of the United States specifically with Mr. Wixman?

A. No.

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Q. Did you ever discuss different forms of government, Communism, Socialism, Fascism?

A. Being and economist teacher, we probably did in our discussions, because we were interested in affairs, and might have done so.

Q. Do you remember any occasion when you might have discussed Communism with Mr. Wixman?

A. No; as I say, I never heard him mention the word until this case was on.

Q. You say you were present at a meeting of which Mr. Burbank Lewis spoke here earlier, but you did not hear the word "Marxism." How do you fix the meeting? How do you know which meeting it was that Mr. Lewis spoke of?

A. Like Mr. Lewis, I do not know just where it was located. I always had difficulty in giving the different places. We met at different hotels at different times. Which one he refers to I cannot tell, but I have never missed one of those dinners, so I must have been present at the one he was talking about.

Q. You attended all?

[fol. 62] A. Yes.

Q. You don't remember any occasion on which Mr. Wixman used the word "Marxism"?

A. No; I think I would have noticed it if it had been done.

Q. You wouldn't be sure?

A. I taught economic sciences at the Lincoln High School, and I think it would have caught my attention.

Q. Provided you had heard it?

A. Provided I had heard it.

Harvey L. Moore, called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Harvey L. Moore.

Direct examination.

By Mr. Gallagher:

Q. Mr. Moore, what is your occupation?

A. I am instructor presently at the City College. I have some other commercial interests on the outside.

Q. Do you know Mr. Wixman?

A. Yes, I know him.

Q. How long have you known him?

A. I would judge 12 or 15 years.

Q. How intimately do you know him? How often have [fol. 63] you seen him in that time?

A. I did not work closely with him, but I have seen him up and down the corridors at times. We were assigned to the same task. I wouldn't say I know him intimately, but I know him better than casually.

Q. Have you had many conversations with him?

A. Oh, yes.

Q. Have you been present when he has talked to other people, either in a small group or a large group?

A. I don't believe I have. I don't recall any such.

Q. Have you ever heard Mr. Wixman make any statement from which you inferred he was not well disposed to the principles of the Constitution of the United States?

A. No, sir.

Q. Or well disposed to the good order and happiness of the United States?

A. No, sir.

Q. In your opinion, is he a person who is attached to the principles of the Constitution of the United States?

A. I have no reason to believe otherwise. Our association has not been altogether too close. I have never heard him make any comments to the contrary.

Q. Do you believe if he is granted citizenship he will be a good citizen?

A. I have no reason to believe otherwise.

[fol. 64] Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Have you ever discussed the Constitution of the United States with him?

A. No, our association came mostly as the result of being assigned to the same position. Twice a year, during registration, for a week we were assigned to certain work, and we were very busy at the time, and I heard no such conversation.

Q. Did you ever talk about Communism or Socialism, or other economic governmental matters of that type?

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A. Those matters never came up between us at any time.

Q. You are currently a Los Angeles City College instructor?

A. Yes.

Q. On which faculty do you teach?

A. I am in the department of business.

EUGENE ZISKIND, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Eugene Ziskind.

[fol. 65] Direct examination.

By Mr. Gallagher:

Q. Dr. Ziskind, what is your occupation?

A. I am a physician, neurologist and psychiatrist.

Q. How long have you practiced in this city?

A. Since 1926.

Q. Do you know Mr. Wixman?

A. Yes, I do.

Q. How well do you know him, Doctor?

A. Very well.

Q. How often in the course of a year do you meet Mr. Wixman?

A. It varies over the course of the years, but from six to a dozen times; sometimes more I think in occasional years.

Q. Have you met in groups with him, in homes or otherwise?

A. Socially, surely.

Q. Have you ever heard Mr. Wixman make any statement which gave you to believe that he was not attached to the principles of the Constitution of the United States?

A. No, sir, I have not.

Q. Or any statement which led you to believe that he was not well disposed to the good order and happiness of the United States?

[fol. 66] A. No, sir.

Q. In your opinion is he attached to the principles of the Constitution of the United States?

A. I would say so, definitely.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Q. Do you believe he would be a good citizen if granted citizenship?

A. I do.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Have you ever discussed the Constitution of the United States with Mr. Wixman?

A. Not particularly. We have talked over the issues of the day, political questions, elections, and what not.

Q. Did you ever talk about forms of government, or economics with respect to communistic or socialistic ideas of things?

A. Not directly, but indirectly, I imagine.

Q. Are you able to remember any particular thing he might have said, even indirectly, bearing on Communism or Socialism?

A. I have no distinct memory. If you asked me a more [fol. 67] specific question, I might.

Q. I am sorry. I wouldn't know what you talked about.

A. I don't either.

Mr. Burns: That is all.

Patricia Lyvengoode, a witness called by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Patricia Lyvengoode.

Direct examination.

By Mr. Gallagher:

Q. Miss or Mrs.?

A. Miss.

Q. Miss Lyvengoode, will you tell us please your occupation?

A. I am recreational director, under the service of the Board of Education, and I also hold adult credentials for teaching public speaking.

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Q. Did you ever study at the City College?
A. I did.
Q. Was that at the time Mr. Wixman was there?
A. It was.
Q. Did you know him at the City College?
A. I did.
Q. Did you belong to any groups that he was supervising?
[fol. 68] A. I was a member of the Iota Delta Pi.
Q. In connection with that organization, did Mr. Wixman ever make addresses?
A. I have no remembrance of Mr. Wixman making any types of addresses in our group.
Q. How long have you known Mr. Wixman?
A. I became acquainted with Mr. Wixman in 1937, when I became a member of the Iota Delta Pi.
Q. Do you recall whether or not Mr. Wixman ever recommended to you, or to any other person in your presence, that you or they should attend a school where Communism or Socialism was taught?
A. I have no such recollection.
Q. Has he ever made any statement in your presence which led you to believe that he was not attached to the principles of the Constitution of the United States?
A. He has never made any such statement.
Q. Or well disposed to the good order and happiness of the United States?
A. No.
Q. Do you believe he is attached to the principles of the Constitution of the United States?
A. I sincerely do.
Q. And well disposed to the good order and happiness of the United States?
[fol. 69] A. I do.
Q. Do you believe if he were granted citizenship he would be a good citizen?
A. I believe he would fulfill his duties as a citizen.
Q. That is all.

Cross-examination.

By Mr. Burns:

Q. Miss Lyvengoode, during the time you were attending the Los Angeles City College, did you ever attend any classes conducted by Mr. Wixman?

A. No, I did not.

Q. Did you ever discuss these things we have mentioned, with him, the Constitution, or economic forms of government?

A. No.

Q. Did you ever have any discussion with him about those things at all?

A. No, I did not.

(Whereupon, a recess was taken until 1:30 o'clock in the afternoon.)

[fol. 70] Los Angeles, California, Friday, January 24, 1947. 1:30 P.M.

The Court: Proceed with the case on trial.

Mr. Gallagher: If the court please, I have a Minister and a Rabbi here. May I call them out of order?

The Court: Yes.

Mr. Gallagher: Dr. Caldecott.

Ernest Caldecott, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Ernest Caldecott.

Direct examination.

By Mr. Gallagher:

Q. Dr. Caldecott, will you tell us please your occupation?

A. I am a clergyman.

Q. Will you tell us the church you are minister of?

A. The First Unitarian Church of Los Angeles.

Q. Do you know the petitioner, Mr. Wixman?

A. I do.

Q. How long have you known him?

A. About 16 years.

Q. During that time have you on numerous occasions had talks with him?

[fol. 71] A. I have.

Q. Do you recall whether or not you talked to others about him?

A. Yes, from time to time I have.

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Q. Have you ever heard him talk, not in private conversation with you, but in groups?

A. Perhaps half a dozen times.

Q. Dr. Caldecott, I am going to ask you whether or not you ever heard Mr. Wixman make any statement from which you drew the slightest inference that he was not attached to the principles of the Constitution of the United States?

A. Never.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. Never.

Q. In your opinion, is Mr. Wixman a person who is attached to the principles of the Constitution of the United States?

A. He most certainly is.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Q. Do you believe if he became a citizen he would be a good citizen?

A. Definitely so.

[fol. 72] Mr. Gallagher: Cross-examine.

Cross-examination.

By Mr. Burns:

Q. Dr. Caldecott, was the Constitution of the United States the subject of any discussion you had with Mr. Wixman?

A. Not at any time.

Q. Did you ever talk about what we might call for brevity, political economic matters?

A. Yes.

Q. Forms of government and economic systems?

A. Frequently.

Q. Did you ever specifically discuss Communism with him?

A. No, except in this sense: He and I agree that what is commonly called teaching economics, whether it be called capitalism or Communism or what not, the students should have both sides taught, in its various steps through the century, particularly through the last few years, the graduates of a college should know——

Q. I don't think that is particularly responsive to my question, Doctor. I am not concerned with that, but I am referring to Mr. Wixman with regard to whether or not he favors Communism.

A. I am quite sure he does not.

Q. Did he ever say so in so many words?

[fol. 73] A. Yes.

Q. Did he ever mention collective economic theories to you?

A. Yes.

Q. What did he say about those?

A. In substance I would say it amounts to this: That in the last generation we have had two huge wars and a major depression in between. It will be necessary if life is to go on, and civilized life particularly, for us to make some modification of the present economic situation, and certainly, if we cannot, it is going to catapult us into another war.

Q. Is that what he said?

A. That is my version of our conversation.

Q. Did he ever talk about capitalism to you?

A. No.

Q. Did his conversation ever involve capitalism as a thing which must give way to collective or some other form of economic government?

A. Such implication might be made, but I never made it myself from his conversation with me. I would say perhaps, if I may venture an opinion, that my version of what he was talking about was a moderate form of capitalism. If that means collectivism, someone else will have to say it.

Q. What was the occasion of your acquaintance with Mr. Wixman? How is that you and he see each other so frequently?

[fol. 74] A. We don't see each other so frequently.

Q. That you know each other so well?

A. It happens that we open our halls to public lecturers, and Mr. Wixman is one of those whom we have invited from time to time to speak, just as we have other persons, to get other points of view, so that we can have other people make a choice, and college students make a choice.

Q. Those lectures are managed by your church?

A. Not all of them.

Q. Do you rent out the hall at times?

A. Yes.

Q. Have you ever rented it to Mr. Wixman?

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A. Not to Mr. Wixman directly, but probably the organization engaged in the service. We pay taxes on our building, the same as a lodge, and have a right to rent.

Q. And the church itself has invited Mr. Wixman to address them?

A. Several times, at our Sunday morning classes.

Mr. Gallagher: That is all.

[fol. 75] JEHUDAH M. COHEN, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

A. Jehudah M. Cohen.

Direct examination.

By Mr. Gallagher:

Q. Rabbi, will you please tell us your occupation?

A. I am a Rabbi, and I am engaged in religious and educational work.

Q. Specifically, what is the type of your work?

A. I am connected with the B'Nai Brith, Hillel Foundation.

Q. What is the Hillel Foundation?

A. The Hillel Foundation is for Jewish students, the Newman Clubs for Catholic students, and the Wesley for the Methodist students.

Q. How long have you held this position?

A. About sixteen and a half years.

Q. Do you know Mr. Wixman, the petitioner?

A. Yes.

Q. How long have you known him?

A. I have known him about twelve years.

Q. How closely have you known him?

A. I have known him both socially and professionally [fol. 76] quite well for half of that time, because I resided in this city the first six of those twelve years, and the last six years I have been in Michigan. During that time I have been able to continue my acquaintance with him, because he has been engaged during part of that time by the same organization for which I am employed.

Q. In connection with your work, have you come in contact with Mr. Wixman's son?

A. Yes, know Myrsam quite well.

Q. Where is he now?

A. Myrsam is now attending the University of California at Berkeley, but I have been in a position to receive many reports regarding his work, which he is doing on that campus, because I was associated with Hillel Foundation on that campus, and I have had reports regarding his efforts at Berkeley.

Q. Have you had occasion to talk to him personally?

A. Yes, I have.

Q. Do you know whether or not he is a Communist?

A. I would certainly doubt it very much; from all the things he has said to me I would say rather definitely that he is not.

Q. Would you state from your knowledge of Mr. Wixman that he is attached to the principles of the Constitution of the United States?

[fol. 77] A. Yes, I would.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Q. Do you believe, if he were made a citizen, he would be a good citizen?

A. Definitely I do.

Q. Has he ever said anything to you that led you to believe that he was not attached to the Constitution, and not well disposed to the good order of the country?

A. Never, at any time.

Q. Do you know what Mr. Wixman is now doing?

A. Yes, I am acquainted with his work.

Q. With what organization is he working?

A. He is now engaged as the executive of one of the organizations of the Los Angeles Jewish Community Council.

Q. Is that connected with the B'Nai B'rith, or some other organization?

A. Yes, the B'nai B'rith organization is part of the Los Angeles Jewish Council.

Q. Do you know of your own knowledge whether or not this organization checks into the political opinions of its employees?

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A. Yes, I am certain it does, especially in the case of persons holding an executive position, and Mr. Wixman is, [fol. 78] and has been for some time an executive of the B'nai B'rith, Los Angeles Jewish Council.

Q. Do you know whether or not this organization would accept as an employee in an executive position a person whose attachments to the principles of the Constitution of the United States could be brought into question?

A. I am certain that it would not engage such person.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. In answer to the last question, Rabbi, when you said the organization would not engage a person whose loyalty and attachment to the principles of the Constitution of the United States could be doubted, you meant, of course, if the organization was not aware that he was not attached to the Constitution of the United States?

A. I have previously indicated that no such person would be engaged without prior investigation of his background. That was the reason I felt I could answer the last question as I did.

Q. Do you know of your own knowledge whether such investigation was made in the case of Mr. Wixman?

A. I have no specific information regarding this specific case. I am acquainted, however, with the general practice and policy of our organization.

[fol. 79] Q. In your conversations with Mr. Wixman, did the question of his attachment to the principles of the Constitution ever come up? Did you ever talk about the Constitution with him?

A. I recall of no conversation when the subject was discussed specifically or in detail. I imagine many times, however, we discussed matters which gave me the right to hold a fairly accurate impression.

Q. Did you ever discuss Communism with Mr. Wixman?

A. I recall no such conversation.

Mr. Burns: That is all.

Mr. Gallagher: That concludes our witnesses that must immediately get away.

The Court: Very well.

Mr. Burns: I would like at this time to call Professor Sooren Frankian.

Sooren Frankian, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Sooren Frankian.

Direct examination.

By Mr. Burns:

Q. Where do you live, Mr. Frankian?

A. 3009 Valley Heart Drive, Burbank.

[fol. 80] Q. Where were you born?

A. Worcester, Massachusetts.

Q. You are a citizen of the United States, are you not?

A. By birth.

Q. What is your occupation now?

A. Instructor, at the City College.

Q. How long have you been an instructor at that institution?

A. Since its beginning, 1929, September.

Q. During the time you have been an instructor there, did you know another instructor by the name of Shulim Wixman?

A. Yes.

Q. Is that the man seated at the table?

A. Yes.

Q. What subjects did Mr. Wixman teach at the Los Angeles City College?

A. Well at times he has taught economics; at times, history.

Q. Were you teaching on the same faculty, that is, the social science faculty of the school, during the same time he was there?

A. Yes.

Q. Did you ever attend any of the classroom lectures given by Mr. Wixman?

A. I had no occasion to, sir.

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[fol. 81] Q. Did you ever attend any other public lectures given by Mr. Wixman?

A. No.

Q. Did you ever have any conversation with Mr. Wixman which involved political economic questions?

A. No, not that I recall.

Q. Specifically, did you ever discuss the subject of Communism?

A. No.

Q. Did anyone else ever discuss Mr. Wixman with you?

A. I have had a number of students complain about him.

Mr. Ganahl: Just a minute. I object to that unless it was in the presence of Mr. Wixman, as to what other students might have told this man.

The Court: I don't understand the hearsay rule is applicable to the same extent in these cases as it is in others.

Mr. Ganahl: But when it goes as far as to say John Doe told Richard Roe who told me John Doe said something, then it certainly has its limitations.

The Court: It does have its limitations, but where we are investigating the responsibility of a teacher, and where students of that teacher make reports to other members of the faculty, it seems to me that is a proper matter for the court to hear in naturalization proceedings.

Mr. Gallagher: I might make the suggestion that we had [fol. 82] here this morning a number of students, and those students reported to this witness. Why can't they be brought in?

The Court: I don't know.

Mr. Ganahl: I would like to object upon the ground that it is irrelevant, and hearsay.

The Court: Objection overruled. We will have the question read.

(Record read by the reporter.)

The Witness: It was common belief on the campus by a great many students that he was a Red.

Mr. Ganahl: If your Honor please, common belief by a great number of students, I think that is a conclusion, and has no part in this.

The Court: Yes. Upon what do you base that deduction you have, Professor?

The Witness: Your Honor, when they come and say, "Well, we heard another lecture on Communism,"—they

might have been exaggerating, I don't know, but I am of the belief that where there is smoke there is fire. It was not from one person. It was a number of persons. If you should ask me who those people are I could not recall names ten or twelve years later, but that was my direct impression.

Q. What was his general reputation there among the student body?

A. Not very good.

[fol. 83] Q. You base that conclusion upon what?

A. On what they brought to me, your Honor.

Q. Students in the College?

A. Yes.

Q. Was there any diversity of opinion on that at all, that you heard?

A. No, but possibly there was, because they were the only ones who talked to me.

By Mr. Burns:

Q. Did you ever go to the home of Mr. Wixman? Were you ever in his house?

A. Well, I think on two occasions, yes, as a guest.

Q. As a guest?

A. Yes.

Q. Were any other people present at that time, other than members of Mr. Wixman's family, and yourself?

A. No. Once I am positive I went, but twice, I don't know. Maybe Mr. Wixman can help me out on that.

Q. Did you ever go to the house with or without going in, at a time when there was a group there?

A. Yes, Mr. Cruse; I did go with him.

Q. Was that in the day time or in the evening?

A. In the evening.

Q. I believe it is already clear that there were a group of people there at Mr. Wixman's house.

A. Yes.

[fol. 84] Q. Did you go in?

A. No.

Q. Did Professor Cruse go in?

A. No.

Q. You both remained outside?

A. Yes.

Q. What did you do?

A. We just watched them go in.

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Q. Were you able to hear anything that went on in there?
A. No.
Q. Any conversation?
A. No.
Q. Were you able to hear any music?
A. There was music played.
Q. Would you know the Internationale if you heard it?
A. No.

Mr. Burns: That is all.

Cross examination.

By Mr. Ganahl:

Q. Mr. Frankian, these students who complained to you about Mr. Wixman, about what time was that, what year?
A. You are asking a difficult question, sir. I cannot remember back that far.
Q. You were there from 1929 on?
A. Yes.
[fol. 85] Q. When did Mr. Wixman come to teach there, do you know?
A. Possibly 1930.
Q. Was it in the year 1930 then?
A. No.
Q. 1931?
A. What are you asking now, sir?
Q. About these students who complained to you about Mr. Wixman.
A. If you are trying to pin me down, I can't answer. Off and on throughout the years, shall I say, from 1930 on to 1940.
Q. Those that approved of Mr. Wixman did not come and say anything to you about him?
A. Not that I recall.
Q. Do you know why the students came to you? You were not head of the department, were you?
A. No, but I was adviser of a number of students. Those advisees would come.
Q. How many students were you adviser for?
A. At the present time we don't have the same system.
Q. I am asking you about the time Mr. Wixman was there.
A. It varied from year to year.
Q. How many students a year would you be adviser of?

A. Sometimes 25; sometimes 100.

Q. Of those 25, how many of them would complain to [fol. 86] you about Mr. Wixman?

A. I can't give a straight answer on that. I don't recall.

Q. It is upon this that you base your opinion of his reputation?

A. It satisfies me, sir.

Q. How many students did you have there during that period?

A. Students?

Q. Yes, at the campus.

A. The classes averaged around 40 or 45. I had five such classes.

Q. Did you take those complaints any higher? You did not go to the head of the department?

A. No, he was already aware of them.

Q. How do you know he was already aware of them?

A. Because he would discuss some of them with me.

Q. How many years did this go on?

A. I don't get the import of your question.

Q. My question is, did you have complaints from these students from time to time from 1931 up to 1940? Did these complaints go on all during those nine years?

A. Off and on,

Q. You did not do anything about it?

A. After all we believe in academic freedom.

[fol. 87] Q. I have asked you whether you did or did not.

A. Your Honor, maybe this line of questioning is all right. I don't like the insinuation he is adding to it. It seems insulting to me.

Mr. Ganahl: I am not insinuating——

The Witness: Your Honor, may I protest that?

The Court: I don't think he is insulting. These lawyers have peculiar ways, and their questions sometimes are not formed with nicety.

The Witness: I will let it go at that.

Mr. Ganahl: Professor, I am not trying to trap you or insult you. I believe in academic freedom as well as you do.

A. I am happy to note that, sir.

Q. I am happy to be able to let you know. What I am trying to elicit is, when these complaints were made to you, you did not do anything further about them?

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A. No.

Q. You base your opinion upon Mr. Wixman's reputation on the campus upon these things that you heard from these students?

A. Definitely.

Q. None of the good things that Mr. Wixman might have done ever came to your attention at all?

A. I don't know.

Q. You would know if they did come to your attention? [fol. 88] They did not come and tell you about it, anyway?

A. That's true. I am sure Mr. Wixman is not all bad, if I may venture that opinion.

Q. You went out that night with Professor Cruse, and you went there to watch, is that correct?

A. Yes.

Q. You went there to observe? Were you invited to come to that house by Wixman?

A. No.

Q. So you did not go inside?

A. Naturally not.

Q. After you observed, did you carry your observations to anyone?

A. No.

Q. Did you make known your observations to anyone?

A. No.

Q. It was just a matter of curiosity; you went there to look to see what was going on?

A. That's right.

Q. As the adviser of these students, what were you supposed to do?

A. Primarily to help them make out their program, chart their majors; furthermore, as general counselor, I advised them on any matter they wished to bring up.

Q. When they brought in complaints they had with [fol. 89] relation to Mr. Wixman, was their observation just offhand, observing, "Well, I heard another lecture on Communism this morning," or something similar to that?

A. I presume some might have been that way. Some came in definitely to complain.

Q. When they definitely came in to complain, what did you advise them with relation to their complaint?

A. Well, that's ten years ago, and I can't recall. I probably would say, and this is probably all my inclination would be to say, "Maybe you misunderstood him," or, "It's

strange that he, an American citizen, should say that about this government,—biting the hand that feeds him." I would definitely say that.

Q. Did you ever take it up with Mr. Wixman himself?

A. No. I would be resentful if he took up anything I said in class.

Mr. Ganahl: That is all.

By the Court:

Q. Mr. Frankian, you assumed at that time that he was an American citizen?

A. Yes, I did. To my surprise I learned he was not.

Q. In your conversation with him did you discuss his citizenship at any time?

A. No; the assumption was that he was one.

Mr. Ganahl: Mr. Wixman thought he was a citizen at that time too.

[fol. 90] By the Court:

Q. You never at any time with him broached the question of citizenship?

A. No. You see, his field of teaching was somewhat different than mine. I taught European history, and American government——

Q. I mean, in your social contacts.

A. No.

Q. Never at any time did you and he discuss the matter of his citizenship?

A. No, sir.

Q. Did you ever call his attention to these remarks that the students made concerning his attitude in teaching economics?

A. No.

Q. Did you have any talk with him at all along those lines, during those times?

A. If any did occur, sir, I don't remember.

Q. I understand, the students who talked to you did not complain of the fact that he was discussing various schisms, or theories of economics, or ideology, but they were complaining about the emphasis he placed upon some particular form that was antagonistic to their ideas?

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A. I would say that definitely. A typical remark would be, "There is nothing you can get him on for that," but they would sense it.

[fol. 91] Q. Would sense what?

A. That he was advocating or preaching that particular type, and finding the good points about it in contrast with our own.

Q. Those boys and girls who complained, were they of the freshman group, or were they of the upper class group?

A. Probably some from each. I wish I could be more definite, sir, but I can't.

The Court: That is all.

By Mr. Ganahl:

Q. You can't give us the name of any of those students that complained to you, at this time, can you, Professor?

A. I was trying to recall some. Sidney Chapman was one.

Q. Is he here?

A. No.

Q. Where is he?

A. I don't know.

Q. That was the one mentioned this morning?

A. He was a member of the Hillel Group, by the way, and he expressed regret that Mr. Wixman was of that opinion.

Q. Is that the only one you can remember?

A. Offhand, yes.

Mr. Ganahl: That is all.

[fol. 92] Redirect examination.

By Mr. Burns:

Q. There are just two classes,—that is, two years at the Los Angeles City College?

A. Yes.

Q. Just two years' school?

A. Yes.

Q. Just to clear up a matter. You testified a few minutes ago that on hearing these complaints from time to time from various students, concerning the matter and manner of Mr. Wixman's teaching, you did nothing about it?

A. Yes.

Q. You did not even report it to the head of your department, Professor Cruse?

A. I never reported it. We talked it over.

Q. Had you had a conversation about this matter with Professor Cruse prior to the time of receiving these complaints yourself?

A. No, except what he told me, if that's what you mean. Some of those cases he brought to my attention, if that is what you mean.

Q. The first time that you ever heard this matter of the possible, let us say, communistic tinged teachings of Mr. Wixman,—the first time you ever heard any question about that at all was from a student, or from some other faculty [fol. 93] member?

A. I wish I could say definitely, but which came first, I don't know.

A. Let me ask it this way: Did you keep the complaints of the various students to yourself for any length of time, without being sure of having conversations with them, that that had already come to the attention of Professor Cruse, head of your department?

A. When I heard these complaints I thought, well, that is just the students' talk, until I began hearing more and more, and I began to wonder if there was any truth to it. I presumed there were complaints about other professors, and students at the college, but when it began happening more and more, I began to wonder.

Q. Do you remember when you first talked about Mr. Wixman's teachings there at school with Professor Cruse?

A. I have talked to him, but I don't know when.

Q. You don't know when it would have been, as to the time of your hearing complaints yourself?

A. I see what you mean. Possibly 1932, if you want a date.

Q. Was it your function in the school to exercise any supervision and control over the teachings of Mr. Wixman in his own classes?

A. No.

[fol. 94] Q. It was to some extent Professor Cruse's function, was it not?

A. Yes.

Q. But not yours?

A. No.

Mr. Burns: That is all. Call Mr. P. A. Horton.

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P. A. Horton, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.
A. P. A. Horton.

Direct examination.

By Mr. Burns:

Q. Where do you live?
A. 414 Edenhurst Avenue.
Q. In Los Angeles?
A. In Los Angeles.
Q. Where were you born, sir?
A. Boston.
Q. You are a citizen of the United States?
A. I am.
Q. What is your occupation now?
A. Insurance broker.
Q. Are you at this time connected with any organizations of any kind?
[fol. 95] A. Many of them.
Q. Specifically, are you connected with any veterans' organizations?
A. Yes. I am past president of the National Sojourners, I have been an officer of the American Legion for many years, and department commander of the veterans' group.
Q. Are you connected at this time with the American Legion?
A. I am.
Q. In what capacity?
A. In the capacity of manager of the County Council of the American Legion.
Q. How long have you been a member of the County Council?
A. Practically 20 years.
Q. Have you held other offices in the County Council of the American Legion prior to becoming manager of the County Council?
A. Yes.
Q. What were some of the other offices you held?
A. Various offices, among them Americanism chairman.

Q. What period of time were you Americanism chairman of the County Council of the Legion?

A. 1938 or 1939; thereabouts.

Q. Was that for just a year?

A. Yes.

[fol. 96] Q. What was the function of that office?

A. Americanism, or those things pertaining to our American form of government, both in construction in Americanism and the defense of the American ideals. That was a part of the American Legion national program. At that time I was on the department radical research committee also, which had duties of exposing radical activities in the community, state and nation.

Q. In connection with that duty of exposing the radical activities in this community, it was necessary, was it not, to make investigation to determine where the radical activities lie, is that right?

A. That's right.

Q. Did you ever make any investigation concerning the situation at the Los Angeles City College with regard to radical activities?

A. I did, for a number of years.

Q. Was this prior to the time that you were a member of that committee, or afterward, or both before and after and during?

A. I have been on the Americanism Committee in some unit of the Legion for the past 15 years, and still am, and that investigation started at the City College when there was that last publicity regarding the big Communist group in the City College. I think it was 1938.

[fol. 97] Q. What form did your investigation take? What did you do yourself?

A. Personally I called at the school, and got acquainted with the faculty, and found out what the situation was, and then obtained certain students to advise me as to the progress of the activities there.

Q. Did you make any investigation in person? Did you go around and listen to any lectures, or anything of that sort?

A. I spent 100 hours on the campus in February, 1939.

Q. During that time did you ever attend any lectures given by Mr. Shulim Wixman?

A. I did not personally.

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Q. Were you ever in any classes which he taught?

A. I was in one of his classes. I was also present when he introduced the young Hindu, René Petal, of the Hindu Communist group.

Q. To whom did he introduce him?

A. To the assembly. He introduced this man, the man who had charge of the assembly,—I don't recall his name.

Q. What sort of an assembly was that?

A. The faculty ordered the assembly. I don't recall now just what the occasion was. I think it was a regular assembly which occurs on certain days.

Q. You say Mr. Wixman at that time introduced——

[fol. 98] A. He appeared at the meeting, and introduced this young man from India.

Q. Do you remember what he had to say about the young man?

A. He just introduced him, that was all.

Q. Was the young man identified as to his own political affiliations?

A. The young man left no doubt in anybody's mind as to his true identity, and his connection with the general theory of Soviet Communism.

Q. The young man spoke then, following his introduction by Mr. Wixman, to this assembly?

A. Yes, I think he spoke about three-quarters of an hour.

Q. You say you attended one of the classes conducted by Mr. Wixman?

A. Only briefly. I did not stay long enough to be of any material value.

Q. Did you ever have any conversations with Mr. Wixman? Did you ever talk to him?

A. No, only briefly at one time when I met him. There was only once I ever met him, and that was, I believe, at a luncheon of the faculty, around 1938 or 1939.

Q. Did you ever see Mr. Wixman away from the campus of the Los Angeles City College, and today in the court [fol. 99] room? Did you ever see him on any other occasions?

A. Yes, I saw him at the trial of the American Legion Schoolmasters' Post, at which he was expelled.

Q. Were you connected with the charges brought against him at that Post?

A. I was familiar with the charges, inasmuch as some of it I was responsible for getting the evidence.

Q. Prior to his appearance on the charges before the American Legion, and probably following the time that you attended one of his classes, and this assembly, when he introduced this speaker, did you ever see him in the vicinity of his home?

A. I saw him one day, I think it was February, 1939, and I believe that was the day I saw him and this René Patel together. I think they were going into his house.

Q. Did your investigation in connection with the reported radical activity at the campus of the City College involve your going to the home of Mr. Wixman at any time?

A. No. I went by there many times. He at that time lived just a block from the school, and I was going in this direction, and quite naturally I passed his house.

Q. Were there ever any groups of people at the Wixman house at any time that you went by?

A. I had attended a group in the Youth Center meeting, at the Youth Center, just north of Franklin, one night, [fol. 100] which turned out to be strictly a Communist meeting. On my way back, where I had parked my car, I passed Mr. Wixman's house, and to my amazement I heard a group in there singing the Internationale.

Q. You recognized the music as the Internationale when you heard it?

A. I certainly did.

Q. Did you go into Wixman's house on that occasion?

A. No, indeed.

Q. Were you ever there?

A. No, not at any time.

Q. Were you able to see who was doing the singing in Wixman's house?

A. No.

Q. Did you see Mr. Wixman there on that occasion?

A. No; just the group voices.

Mr. Burns: That is all.

Cross-examination.

By Mr. Ganahl:

Q. Mr. Horton, you said you saw groups of people in front of Wixman's home. What year was that?

A. I never saw a group of people in front of his home.

Q. Did you see a group of people at Wixman's home?

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A. No.

Q. Did you testify to that?

[fol. 101] A. I heard a group of voices singing.

Q. Prior to that you saw groups of people going into Wixman's home?

A. I did not say that.

Q. When was this occasion you thought you heard the Internationale being sung in the house of Mr. Wixman, as you stated?

A. I think it was February, 1939.

Q. You did not see Mr. Wixman there at that time?

A. No.

Q. Or Mrs. Wixman?

A. In fact, I did not see anybody; I just heard the voices.

Q. How does the Internationale go?

A. I am not a singer, and I don't want to be made fun of.

The Court: I don't think I want to hear that here.

Mr. Ganahl: I was curious as to what he heard.

Q. At this general assembly that you have told us about, at which was René Petal, that was a general assembly at the City College?

A. Yes, several classes of that particular branch or subject, like social science.

Q. Were other faculty members there too? Was the head or president of City College there?

[fol. 102] A. No, indeed.

Q. Was this the only speaker at that assembly?

A. The class instructor, or rather the school room adviser, if that is what you might call him, was there, and then the guest was this Hindu who, by the way, made a terrible tirade against Britain and the glorification of Russia. That was what his speech was.

Q. Was Professor Cruse there?

A. No. Neither was Dean Curen.

Q. How do you recall they were not there?

A. Merely a matter of memory.

Q. How do you know Petal was there?

A. I went there intentionally.

Q. Did you know in advance that Petal was going to speak?

A. Yes.

Q. Did you make any complaint about the speech to the City College authorities?

A. I discussed it very thoroughly with them, yes.

Q. Did you make any complaint before the man spoke there?

A. No, I did not make a complaint at either time. I discussed it.

Q. Did you make any examination of Petal prior to the talk before the City College assembly?

[fol. 103] A. No.

Q. What did you find out about Petal?

A. I presume it was on pieces of literature which were circulated around the campus, which we eventually stopped as being against the law.

Q. You don't know who invited Petal to speak at the City College?

A. Not of my own knowledge.

Q. If he came to speak, someone would have to introduce him, if he spoke before the assembly?

A. The actual introduction of the speaker was made by a man in charge of the assembly. I can't recall his name.

Q. Was this Wixman?

A. No.

Q. He called upon Wixman to introduce the speaker of the day?

A. Wixman introduced him to him, as I recall it now, and he introduced him in turn.

Q. It is not possible for you to have been mistaken about the introduction of Petal by Mr. Wixman, is it?

A. I don't think so. It was seven years ago. I don't believe so.

Q. If Mr. Wixman testified under oath that he never did introduce such a man, did not know him, would that help your recollection at all?

[fol. 104] A. No. That's as I recall it.

Q. Do you know whether the Internationale, that you heard being sung, that you have identified as the Internationale, Mr. Horton, on February, 1939 was coming by a radio or not?

A. Well, if I remember correctly it was merely a piano and the voices.

Q. Do you know if that was coming by radio?

A. I hardly think it would be, so many voices with such a volume.

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Q. Do you know whether it was coming by radio or not?
A. No.
Q. You don't know?
A. I say no, it could not have been by radio.
Q. Did you take a look at who was inside the house?
A. The shades were pulled. I was not peeking in the window.
Q. Did you see any people inside the house at all, Mr. Horton?
A. I saw flitting shadows go by the window, yes.
Q. You don't know whether they had a radio in the house?
A. I haven't the slightest idea.
Q. How long did you stop and watch the house at that time?
[fol. 105] A. I did not stop and watch the house. I just lingered there a few minutes, and went on about my business.
Q. When you say you lingered there——
A. I would say five minutes.
Q. Did you park your car; get out of your car?
A. No, I did not have a car. I walked to the car.
Q. You stayed there about five minutes, and then went on?
A. I would judge so, yes.

Mr. Ganahl: I think that is all.

Redirect examination.

By Mr. Burns:

Q. Mr. Horton, you can tell the difference between a group of live voices, and a radio program, can you not, without seeing them?
A. I would judge I could, very definitely.
Q. You could clearly hear this particular number, the Internationale?
A. Yes.
Q. With which you are familiar?
A. Yes.
Q. Were they singing it in the English version?
A. I think it was.

Mr. Burns: That is all.

[fol. 106] Recross examination.

By Mr. Ganahl:

Q. You say you can distinguish between human voices in a room, when you can't see in the room, and voices coming over a radio. Will you tell us of your ability to make that distinction?

A. It is more natural than the radio. It does not have the canny sound, which is clearly distinguished from the very best of radios. It does not start and stop.

Q. You were there about five minutes?

A. I would judge I was there about five minutes. Maybe less.

Q. During all of five minutes you heard the singing, is that right?

A. About that.

Mr. Ganahl: That is all.

Mr. Burns: That is all. That concludes the government's witnesses in this matter, your Honor. I want to question the petitioner. I can do so now, or wait. He will have to stay here until the end of this proceeding anyway.

Mr. Ganahl: Whichever suits your Honor.

The Court: Either way. I have no preference at all.

Mr. Ganahl: We will put Mr. Wixman on, and proceed in an orderly way.

Mr. Gallagher: The government has not even begun to [fol. 107] present a case that would justify the denial of citizenship to Mr. Wixman, and Mr. Wixman should be allowed to take the oath of allegiance now, without any further proceedings.

The Court: Gentlemen, if you have any other witnesses you desire to call preliminary to the applicant, you should call them so that they can get away.

Mr. Burns: I think this applicant will be on the stand for some time.

Clinton S. Smith, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Clinton S. Smith.

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Direct examination.

By Mr. Gallagher:

Q. Mr. Smith, what is your occupation?

A. I am an instructor at the City College; at the present time a member of the history department, social science.

Q. How long have you been occupying that position?

A. I have been there since 1929, with a year's exception, 1944-1945.

Q. Were you then in the political science and history department at the same time Mr. Wixman was?

A. That's right.

Q. You say you were absent for a while. While you were [fol. 108] absent from teaching work, what work did you do?

A. I was working in landscape work. That was the year we had dismissals at the college.

Q. In connection with your work in the political science and history department did you come in frequent contact with Mr. Wixman?

A. Yes, I did, as a member of the department.

Q. Did you, from time to time, have faculty meetings, or rather departmental meetings?

A. Yes, I did.

Q. When Mr. Cruse would be present, and you and the other members of the political science and history department?

A. They were not numerous, but we had some.

Q. At those meetings would the matter of teaching policy be discussed?

A. I am not sure that I ever recall such discussion in our departmental meetings.

Q. Did you ever hear any criticism by other members of the faculty in any such meetings,—any criticism of Mr. Wixman because of the character of his teaching?

A. None whatsoever.

Q. Did you ever have any students complain to you that Mr. Wixman was teaching Communism or radical philosophies?

A. None whatsoever.

Q. Do you know what Mr. Wixman's general reputation [fol. 109] in the school was as a person loyal to our Constitution?

A. I think I can express an opinion on that subject.

Q. What is it?

A. There were a good many of them in the campus—I can go back a little more than that. We have always had a sort of division in the campus. Many of us preferred to be called liberals, but many had just as much the same desire to be called conservatives. Mr. Wixman, I am sure, has been grouped among the liberals with a great many of the rest of us.

Q. Did you ever attend any of Mr. Wixman's classes?

A. I had no occasion to at all.

Q. Whether in private conversation, or in the presence of others, have you ever heard Mr. Wixman make a statement which seemed to you to indicate that he was not attached to the principles of the Constitution of the United States?

A. None whatever.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. I never heard him make a statement to that effect.

Q. Do you believe if he were granted citizenship he would be a good citizen?

A. I have every reason to think so, yes.

Q. And attached to the principles of the Constitution?

A. Yes, sir.

Q. And well disposed to the good order and happiness of [fol. 110] the United States?

A. Yes.

Q. You are a citizen yourself, I presume?

A. Yes.

Q. I am not going to ask that question of all my witnesses. It is quite obvious that they are. That is all.

Cross-examination.

By Mr. Burns:

Q. In these conversations which you had with Mr. Wixman, did any of them touch upon the things that Mr. Gallagher referred to? Did any of the conversations touch upon the subject of the Constitution, or on Communism, or any sort of radical activity?

A. In a very general way.

Q. If so, you don't remember any specific instance of any kind one way or the other?

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A. No, I don't.

Mr. Burns: That is all.

Mr. Gallagher: Mr. Ottis Coan.

[fol. 111] Ottis Coan, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.
A. Ottis Coan.

Direct examination.

By Mr. Gallagher:

Q. What is your occupation?
A. Teaching in the Los Angeles City College, in the English department.
Q. Since when have you been teaching?
A. 1929.
Q. Do you know the petitioner, Mr. Wixman?
A. Yes, sir.
Q. How long have you known him?
A. 17 years; since 1930.
Q. Did you know him at the college?
A. Yes, sir.
Q. Did any students ever come to you to complain of Mr. Wixman's teachings as being radical or un-American?
A. No, they came to me to tell me they thought he was a stimulating teacher.
Q. Do you know what Mr. Wixman's reputation on the campus was at the time he was there, as a person who was teaching in a manner which would indicate loyalty to the [fol. 112] government of the United States?
A. Yes, sir, he was more active than most teachers are in behalf of democratic procedure in the groups to which he belonged, and was more stimulating than the average teacher in those regards, in regard to the support of the Bill of Rights, and the application of the Constitution to American life.
Q. Did you ever hear Mr. Wixman make any statement, either to you when you were with him alone, or with others,

or in an assembly, which gave you the impression that he might not be attached to the principles of the Constitution?

A. No; the opposite to that.

Q. Or that he was not well disposed toward the good order and happiness of the United States?

A. Certainly not.

Q. Do you believe if he is granted citizenship he will be a good citizen?

A. Better than the average, yes.

Q. By the way, did you attend a meeting at the City College general assembly when a man named Mr. Petal spoke?

A. No, sir, I don't recall him at all.

Q. Would you know whether or not, during the time you were there, Mr. Petal ever spoke? If he did, would you have knowledge of that fact?

A. No, I have no recollection.

Q. I think you did not quite understand me. Assuming [fol. 113] for the sake of argument that he had spoken there, would you know it?

A. I doubt it. We have had many, many speakers every year for 17 years.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. I understand you are on the English faculty of the school?

A. Yes.

Q. Mr. Wixman was in the social science faculty, was he not?

A. Yes.

Q. Did you ever have any occasion to discuss with him yourself the matters that he was teaching in his course?

A. No, sir.

Q. Did you ever speak to him in casual conversation about the economic situation, and which form of government was economically preferable, and things of that sort?

A. Many times.

Q. What did he have to say about that? Which type of government did he think, if he expressed any opinion one

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way or the other, fostered the economic good of the people?

A. Democracy.

Q. Did he espouse the capitalist form of economics that [fol. 114] we have in this country at the time, or did he want them modified to a collective state?

A. I am certain he would want it modified. The conversations I had with Mr. Wixman occurred during the '30's when most of the democracies were called Communistic on the City College campus; his line of argument was similar to that of many other people, and the word "Communist" was thrown at most all writers on the campus for ten years or more.

Q. Did he ever speak of the probable life of capitalism with you,—how much longer we might expect to have capitalism in this country?

A. I don't recall that.

By the Court:

Q. What was the stimuli the students said they received from his lectures?

A. They said he was not afraid to discuss all sorts of questions. I heard him give a lecture on Communism and Fascism, and I felt he gave a good factual exposition of these two ideas as they were working out in Europe. I was not offended by the lecture. I am violently anti-communistic.

Q. You were a professor in the school at that time?

A. I am a teacher.

Q. Were you at that time?

A. Yes, I have been teaching all that time.

Q. Were boys and girls there?

A. Yes. That was open to the school. It was a faculty [fol. 115] lecture, a series of what is called open forum. I don't recall now how many there were; several of them in the 30's.

Q. Was this stimulating that the student body received the same impression you received of the lectures?

A. Yes, sir.

Q. When you said he was stimulating?

A. Yes. All the students go there to learn about all types of government, if they study political science and economics. That is what they want to hear.

Cross-examination.

By Mr. Burns:

Q. Was it your impression, Mr. Coan, that in the lectures he gave regarding Communism and Fascism, that he spoke of those things with strict neutrality, and that he was just presenting historical facts, and other people's ideas about them, without recommending one way or the other?

A. That was my general impression of the lectures.

Mr. Burns: That is all.

Harry C. Mitchell, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Harry C. Mitchell.

[fol. 116] Direct examination.

By Mr. Gallagher:

Q. Dr. Mitchell, please tell us your occupation.

A. I am an instructor at the City College.

Q. In what department?

A. I have been teaching economics, history, government and sociology.

Q. Do you know the petitioner, Mr. Wixman?

A. Yes, I know Mr. Wixman.

Q. How long have you known him?

A. I have known him for about 26 years.

Q. Did you know him in connection with his teachings at the City College?

A. Yes, we came there together the year the institution was founded, about 17 years ago.

Q. Did you ever hear any complaints of any students that Mr. Wixman was teaching Communism, or that he was a radical, or un-American in his teachings?

A. No, no complaints on those scores.

Q. Do you know what Mr. Wixman's reputation on the campus was when he was teaching there, as to whether or not he was a person who was loyal to the——

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The Court: Wait a minute.

The Petitioner: I am sorry, your Honor. There was a message from one of the witnesses to call the clerk of the court.

[fol. 117] The Court: Proceed. Read the question, Mr. Reporter.

(Question read by the reporter.)

By Mr. Gallagher:

Q. —to the principles of our government?

A. Well, his repuation was like that of other members of the faculty. It was good, so far as I know, unless there were some who were partisans one way or another, who insisted on some particular interpretation; but that would not be a question of loyalty to the Constitution, however, or to the American way of life.

Q. Did you ever hear him make any statement to you, either when you were with him alone, or in the presence of others, that led you to believe he was not teaching the principles of the Constitution of the United States?

A. No, I have not heard him make such statements.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. The answer is no.

Q. Do you believe if he is granted citizenship he will make a good citizen?

A. I suspect he will.

Q. You believe he is attached to the principles of the constitution?

A. I believe he is.

Q. And well disposed to the good order and happiness of [fol. 118] the country?

A. Yes, I think so.

Q. Do you recall a lecture out at the City College where Mr. Petal spoke?

A. So far as I know, I never heard of it.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. You are on the social science faculty, teaching economics and history?

A. Yes.

Q. You were on that faculty during the time Mr. Wixman was?

A. During the entire time.

Q. During that time did you ever discuss with him matters which he would teach in his classes?

A. Oh, yes, we have had extensive discussions on all sorts of matters dealing with the material germane to our field of instruction.

Q. Just you and he, or larger groups?

A. I have been in groups where some of those questions have been discussed,—not a great many. I have been, I think, to one or two meetings of the history group, the Iota Delta Pi. I have been to one or two meetings of that, and a few others, not a great many, however, where he has been.

[fol. 119] Q. Did the question of the amount of emphasis placed on expounding communistic theories ever come up, in the discussions which you had with him privately, or in discussions which came up in any of the groups, with other members of the faculty?

A. May I ask what the Communism theory is?

Q. You are a member of the economics department?

A. Yes.

Q. And social science?

A. Yes.

Q. You are generally familiar with Marxian Communism?

A. Being a teacher, I am familiar with the history of a great many such matters. I have put in a number of years teaching. I think I am familiar with it. I know there is a wide variety of interpretations, particularly when the terms were used around the college in the last decade.

Q. Take it in its purest sense, I mean, true Communism, not Red baiting. I was speaking of the theory of Communism, in his classes.

A. I have not attended his classes, so I don't have any first hand information of what was discussed there.

Q. Did he ever mention teaching it in any of his classes?

A. I don't recall any mention of it, and I am familiar with most of his reading assignments. I don't recall any [fol. 120] specific assignments in connection with it.

Q. Did he, in any of his reading assignments that you saw, recommend Das Kapital by Karl Marx?

A. I don't remember seeing that list. I am familiar generally with the theorems of writers, including Communism,

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but specifically, as to Das Kapital, I don't have that in mind.

Q. You did not discuss the inclusion of those particular theories in the economic theories in his course, with the result that you did not discuss his teaching Communism?

A. Not under that name.

Q. Not even in the economics class, the theory of Marxism or Socialism.

A. I don't remember, but I don't see how he could escape it.

Q. There was no conversation between you about that?

A. No.

Q. Did you ever have a conversation with him, between the two of you privately, or within a larger group of two extra people, or a large group of extra people, concerning his own views in regard to Communism?

A. No, I have never been in such a group.

Q. Did he ever talk about Socialism with you?

A. I suppose he has indirectly; we must have discussed it around other problems, about capitalism and democratic processes. I don't recall specifically about Communism. [fol. 121] Q. Or anything in that general class, including Socialism?

A. I don't recall any conversation about Communism.

Q. Did you ever hear him discuss the Constitution of the United States, regarding its economic features, and the Bill of Rights?

A. I know we discussed the Constitution in all of its phases. I don't recall that we ever discussed it with regard to an economic interpretation.

Q. The right to private property?

A. I don't think we had any such discussion.

Mr. Burns: That is all.

Marcus J. Finkelberg, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Marcus H. Finkelberg.

Direct examination.

By Mr. Gallagher:

Q. Mr. Finkelberg, what is your occupation?

A. Automobile dealer.

Q. Are you connected with any war veterans' organization?

A. Yes, I am commander of Tom Mix Post of the American Legion.

[fol. 122] Any other organization?

A. The Jewish War Veterans of the United States.

Q. Do you know the petitioner, Mr. Wixman?

A. I do.

Q. How long have you known him?

A. About six years.

Q. How closely have you been associated with him during that period?

A. I have been associated with him only in veterans' affairs, on an average of about two evenings a month.

Q. Have you heard him talk publicly in groups of more than one or two?

A. In groups of veterans, sometimes 50 or 100 together.

Q. Have you frequently talked to him personally?

A. At the meetings, yes.

Q. Have you heard Mr. Wixman make any statement from which you inferred he might perhaps not be attached to the principles of the Constitution of the United States?

A. No, sir.

Q. Or any statement from which you might have inferred he was not well disposed to the good order and happiness of the United States?

A. No, sir.

Q. Do you believe, from your knowledge of Mr. Wixman, that he is attached to the principles of the Constitution?

[fol. 123] A. In joining these veterans' affairs we take a certain oath of allegiance, of the American Legion, the first three lines of the preamble to the Constitution, in which we agree to defend and uphold the Constitution of the United States of America; to maintain law and order, and to foster and perpetuate 100 per cent Americanism. I think that should answer the question.

Q. Did his actions and activities lead you to conclude he was attached to the Constitution?

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A. Yes.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Q. Do you believe he would make a good citizen if he were granted citizenship?

A. I do, sir.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. You made reference to Mr. Wixman addressing groups from 50 to 100 war veterans, and also made mention of the fact that you are a member of the American Legion. Have you heard Mr. Wixman address groups of American Legion-aires?

A. No.

Q. Other than the veterans' organization you are re- [fol. 124] ferring to?

A. No.

Q. The oath you repeated awhile ago is an oath in the American Legion?

A. That's right.

Q. Do you know of your own knowledge whether Mr. Wixman is a member of the American Legion?

A. I know he is, but not at that time, I did not know.

Q. Also talks he gave before groups of other veterans, other than the American Legion,—were any of those on economic subjects?

A. They were not talks he personally gave. They were matters brought up on the floor amongst groups of veterans. It was not an individual speech.

Q. Was there any occasion when he rose to speak at one of these meetings, or did he, with or without occasion, ever go into economic affairs? Did he ever speak about forms of government, and things of that sort?

A. I don't believe anything of that sort ever came up.

Q. Did anything of that sort ever come up in the private conversations you had with him?

A. Not that I remember.

Mr. Burns: That is all.

[fol. 125] Dora Berres, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Dora Berres.

Direct Examination.

By Mr. Gallagher:

Q. Miss Berres, what is your occupation?

A. Attorney and social worker.

Q. For what organization are you working?

A. Council of Jewish Women, Los Angeles.

Q. Do you know Mr. Wixman, the petitioner?

A. I do.

Q. How long have you known him?

A. About 18 months.

Q. During that time how often have you had occasion to talk to him?

A. Quite frequently when he was in the city. He was absent for short periods of time, for a period not exceeding about six or eight months, but he would be in the city for portions of that time, and I would be in touch with him.

Q. Have you ever heard Mr. Wixman make any statement from which you concluded he was not attached to the principles of the Constitution of the United States?

A. We would not have accepted him as a client for the [fol. 126] service unless we had convinced ourselves that he had accepted wholeheartedly the Constitution and the American status.

Q. And was well disposed to the good order and happiness of the United States?

A. Yes, sir.

Q. Do you believe, if he is given citizenship, he would be a good citizen?

A. I do.

Q. Attached to the principles of the Constitution?

A. Yes, sir.

Q. And well disposed to the good order and happiness of the country?

A. Yes.

Mr. Gallagher: That is all.

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Cross-examination.

By Mr. Burns:

Q. Miss Berres, you have testified that you have known Mr. Wixman now for a total of about 18 months?

A. Yes.

Q. And that during a portion of that time, for six or eight months of the time, he would be out of the City of Los Angeles?

A. No, he was out of the city for a portion of the time between six and eight months during the eighteen months.

Q. How frequently have you seen him when he was here, [fol. 127] leaving out the six or eight months?

A. Maybe once or twice a week and maybe oftener some weeks.

Q. At least several times monthly?

A. Yes, sir.

Q. Does that go on to today?

A. No, when the decision came down from the department recommending against the naturalization, and we had to withdraw at that point for formal representation; after that I would see him occasionally; not that often.

Q. By "we" you mean the Council of Jewish women, in connection with which organization you were assisting Mr. Wixman in the naturalization proceedings?

A. Helping to.

Mr. Burns: That is all.

By Mr. Gallagher:

Q. In attempting to give him citizenship, you were convinced in your own mind that he would make a good citizen?

A. Very definitely so.

By Mr. Burns:

Q. You said, in response to a question by Mr. Gallagher a little earlier, you would not have accepted him as a client unless you had first satisfied yourselves of his loyalty to the country, or words to that effect?

A. Yes.

Q. How did you satisfy yourselves, before you repre- [fol. 128] sented him here? What investigation, or other means of satisfying yourself did you make?

A. Primarily from two sources. Aside from the information which was available in the local community, which we ourselves ex-lored, Mr. Wixman was employed at that time by the Jewish Community Center, but the Hillel Foundation, of which Rabbi Cohen spoke, was negotiating for his services, and the chairman of that national committee is a Dr. Seman, of Chicago, and Dr. Seman has been a personal and close friend of mine for many years. He had observed Mr. Wixman in action on the national scene, and he was convinced of his loyalty to the United States; and then when the Semans came here, just about the time Mr. Wixman first came to your office, the Wixmans extended the hospitality of their home, because there was a shortage in housing, and he lived in that home three or four months with his wife, and they had a close chance of observation. Following that Mrs. Ludwig Bernstein, who has been a long term friend of ourselves, also sought the opportunity of living there, because she could not find housing when she returned from the East. She assured me that there was no pattern involved that was not up to the best concepts of American life.

Q. You were satisfied that he was attached to the principles of the Constitution, because you had the word of a group of people, the Semans, and this other lady, who were [fol. 129] residing, and who had both resided at his house, and said they were satisfied?

A. They had a close point of observation.

Q. Do you know when the Seman's first met him?

A. It was sometime, I believe—they can answer better, but my impression is the Semans met him maybe four or five years ago. It may have been longer. But Dr. Seman was advising me in Cleveland, when I went to the conference there, about the Wixmans' dilemma here, and his reaction to the facts as he discovered them. How much further back the acquaintance went, I don't know. That was about four or five years ago.

Q. And the other lady?

A. I don't know how long she has known him. I have known her about 31 years.

Q. He was a candidate for citizenship when you met him?

A. Yes.

Q. In fact, it was in connection with his application for citizenship that you did become acquainted?

A. No.

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By the Court:

Q. Did you know anything about him before he made his application for citizenship?

A. The first I knew of him was when he was associated with the Jewish Community Center out at Melrose—Beverly and Fairfax, it was then called, at the time of his appoint-
[fol. 130] ment. I was advised of the difficulty he had. I had not had any background before.

Q. Was that the first knowledge you had of him, after he filed his petition for naturalization?

A. The original one. We assisted in the filing of the second. We had a conference with the Naturalization Service to determine whether the original application would be considered as being closed with prejudice, and going on for the period embraced in the second application. It was with that understanding, that we could begin from that point, and establish good character, that we undertook processing the matter.

Q. You say it was after the denial of the first petition with prejudice. Denial, you mean, by government authorities; not by the court?

A. No, the matter was on the calendar for the court. Then it was on stipulation, if I am not mistaken, that the original petition was dismissed, with the further stipulation that a new petition would be filed in the early future, and it was immediately after that that Mr. Wixman came to our office.

Q. To put it in a succinct way then, so the court will understand how long a time you personally have investigated his attitude, and know anything about him, your contacts in that respect were all subsequent to his initial filing of the petition?

[fol. 131] A. Yes.

By Mr. Gallagher:

Q. Your personal contact was subsequent to that, but the investigation that you made covered persons who had known him for a long period of years?

A. Definitely. That is what we assured ourselves of.

By Mr. Burns:

Q. Did you contact anybody who had known him during the time of his teaching in the City College, at Los Angeles?

A. Yes.

Q. And knew him there?

A. Yes, the original reference came to us from Mr. Lewis, who was executive director of the Jewish Community Service in Los Angeles, which is a public relations division, and he gave us all the information that he had gained in his attempt to unravel the difficulties, and assure himself that Mr. Wixman was entitled to have the Jewish Community Services to establish his loyalty, and his clearance, and the facts revealed were the basis on which we accepted the service, and we retained an interest, because of these other friends in whose loyalty we had absolute confidence, and who had been in a position of observation. That was at our disposal.

Mr. Burns: That is all.

[fol. 132] Dudley Gordon, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Dudley Gordon.

Direct examination.

By Mr. Gallagher:

Q. What is your occupation, Dr. Gordon?

A. I am an instructor at the Los Angeles City College.

Q. What department?

A. The English and cultural arts department.

Q. Do you know Mr. Wixman?

A. I do.

Q. How long have you known him?

A. Since 1930.

Q. You knew him there at the City College?

A. Yes.

Q. Did you ever hear any complaints by any students at the City College, that Mr. Wixman was teaching Communism, or was teaching radicalism, or was disloyal in his teachings?

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A. None whatever.

Q. Do you know what Mr. Wixman's reputation among the student body was as to whether or not he was a loyal teacher?

A. I would say he was held in high esteem by the students.

[fol. 133] Q. We are not so much interested in whether he was held in high esteem as a teacher, as to how he was held with reference to his loyalty?

A. I would say that holding him in high esteem would include his loyalty.

Q. Have you had conversations with Mr. Wixman himself?

A. Oh, many times.

Q. On how many occasions would you say?

A. Too numerous to mention.

Q. Were those conversations between you and him alone, or were there at times others present?

A. Most often there were others present.

Q. Did you ever hear Mr. Wixman make any statement from which you inferred or concluded that he might not be attached to the principles of the Constitution of the United States?

A. Never.

Q. Or from which you inferred that he might not be well disposed to the good order or happiness of the United States?

A. No.

Q. In your opinion, is he attached to the principles of the Constitution?

A. I am quite certain of it.

Q. Is he, in your opinion, well disposed to the good order and happiness of the country?

A. He is so, in my belief.

[fol. 134] Q. Do you believe if he is given citizenship he will be a good citizen?

A. I do.

Q. Do you recall whether or not around February, 1932 there was a man named Mr. Petal who spoke at the City College?

A. I never heard of him.

Q. In 1939?

A. I never heard of him at any time.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. You are a member of the English department at the City College, are you?

A. Yes.

Q. Did you ever attend any of the classes Mr. Wixman conducted in the social sciences department?

A. Never.

Q. Did you ever have any discussion with him as to the matter of his teaching in his classes?

A. No.

Q. Did you ever discuss Communism with him, aside from whether he might teach it or not, or how he should treat it, if he did teach it?

A. No.

Q. Did you ever talk with him about his views on the [fol. 135] subject?

A. No.

Q. Did you ever have the Constitution of the United States as a subject for discussion between you and Mr. Wixman?

A. Oh, I think it perhaps might be referred to incidentally.

Q. Did you ever discuss with him, or hear him speak, even incidentally, as to what we might call the economic features of the constitution,—its guarantee of the right to private property, and things of that sort?

A. During the depression there were many times we were discussing current problems, and the problem of private property would probably be mentioned; but at no time did I hear him express the statement that private property is not a good thing to have.

Q. Do you remember having heard him say, for example, that private property was a good thing to have?

A. I gathered that he, like myself, was very much interested in acquiring as much as he could.

Q. You gathered that? Did you ever hear him say that? Did you ever her him uphold the Constitution in regard to private property?

A. I don't recall his specifically making that statement.

Mr. Gallagher: Did you ever hear him say that private [fol. 136] property should be confiscated without compensation?

A. No; at no time.

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VICTORIA MCALMON, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Victoria McAlmon.

Direct examination.

By Mr. Gallagher:

Q. Miss McAlmon, will you please tell us your occupation?

A. I am a retired teacher.

Q. Before you were retired?

A. I was placement co-ordinator at the Los Angeles City College.

Q. What does that mean?

A. I got jobs for the students. I did occupational research, and gave the students occupational advice. For two years I was administrator in the N.Y.A. I saw the graduates who wished jobs, and undergraduates who wished part time jobs, or withdrawals who wished full time jobs. I saw every variety of student.

Q. In your position as placement secretary, did you run into most of the students?

A. Most of the students who wanted jobs. I interviewed [fol. 137] those students every year.

Q. Did you ever hear any student criticize Professor Wixman as being a person who was making disloyal statements or advocating Communism or any form of radicalism?

A. I did not.

Q. Will you tell us whether or not those students that would come to you would unburden their hearts about different professors,—whether they liked their way of teaching, and what they said?

A. In order to find out more about the student, for the past three years I asked every student these questions: What is your favorite subject? What book impressed you most? What instructor did the most for your intellect? I was interested to see that all of them, despite the fact that economics is a dull subject, they thought Mr. Wixman enlivened it by his discussions, and not that economics was something only to be taken if you had to.

Q. Did you get the inference from what any student told you that Mr. Wixman was weighing his treatment of economics in favor of Communism or radicalism or Socialism?

A. No, not at all. I mean, all students talked to me rather confidentially. I was not a classroom teacher. They felt they could be more frank with me than they were with a classroom teacher.

Q. You had occasion to talk to Mr. Wixman himself?

[fol. 138] A. I knew him very well. I have been at their home many times. He and his family have been at my home.

Q. Have you talked to others about Mr. Wixman?

A. Yes, frequently.

Q. Have you ever heard any statement by Mr. Wixman, either to you alone or in the presence of others, that led you to suspect that Mr. Wixman was not teaching the principles of the Constitution, or that he was not well disposed to the good order and happiness of the United States?

A. No.

Q. Did any person ever tell you that Mr. Wixman had made statements which they thought were disloyal to the government of the United States?

A. No.

Q. Do you know what Mr. Wixman's general reputation on the campus was as a person either loyal or disloyal to the Constitution of the United States?

A. A very good reputation.

Q. Do you believe if Mr. Wixman is made a citizen that he will be a good citizen?

A. A very good citizen.

Q. Attached to the principles of the Constitution of the United States?

A. Yes, indeed.

Q. And well disposed to the good order and happiness of [fol. 139] the United States?

A. Yes.

Q. You are a citizen yourself?

A. I am.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Did you ever, in any discussions with Mr. Wixman, either between the two of you, or in the presence of others, talk about his political and economic views?

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A. Well, as the questions have gone on since I have been here, I would say no. We talked about elections, about graft, about corruption, and the Bill of Rights.

Q. Did you ever talk about Communism?

A. No, I don't think so.

Q. Did you ever talk about whether the Communist form of government would be desirable for the United States?

A. I would not be apt to talk about that, because I am so opposed to it.

Q. Did any student you interviewed talk to you about the political and economic trend of Mr. Wixman's courses at school?

A. No. As I said, in answer to the question: What is your favorite subject? No one said, "Economics is my favorite subject." When asked what teacher impressed you [fol. 140] most? They would say, "The sociology teacher," because they thought of the subject as very tiresome.

Mr. Burns: That is all.

(Short recess.)

V. N. Eltinge, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name to the court.

A. V. N. Eltinge.

Direct examination.

By Mr. Gallagher:

Q. Mr. Eltinge, what is your occupation?

A. I work for the Bank of America, as manager at the Santa Monica and Vermont branch.

Q. Do you know the defendant, Mr. Wixman?

A. Yes, sir.

Q. How long have you known him?

A. Sinc- 1938.

Q. Did you know him only in connection with banking matters, or otherwise?

A. Principally, yes.

Q. Have you had many occasions to talk to Mr. Wixman?

A. Yes.

Q. Did Mr. Wixman ever say anything, in your presence, that led you to believe that he was in any way not teaching [fol. 141] the principles of the Constitution of the United States?

A. No, I did not.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No, sir.

Q. Do you believe, if he is made a citizen, he will be a good citizen?

A. Yes, sir.

Q. Attached to the Constitution?

A. Yes, sir.

Q. And well disposed to the good order and happiness of the United States?

A. I do.

Mr. Gallagher: That is all.

Cross examination.

By Mr. Burns:

Q. Have you had any conversations with Mr. Wixman concerning the Constitution of the United States as such?

A. No, sir, I have not.

Q. Have you ever discussed the guarantee in the constitution of the right to private property?

A. No, sir, I have not.

Q. Have you ever spoken with him about Communism?

A. No, I have not.

Q. Have you ever spoken with him about collectivist [fol. 142] theories of the State in general?

A. No, I have not.

Mr. Burns: That is all.

Redirect examination.

By Mr. Gallagher:

Q. Did you ever discuss any current problems with him?

A. Do you mean currently political problems?

Q. Either political or economic current events, elections, or anything like that?

A. No, I have not. Our business principally was bank business.

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Q. In connection with money matters, did he ever make a suggestion that there ought to be a fundamental change in the banking system, or anything of that kind?

A. No, sir.

Q. That the government should take over the banks, or anything like that?

A. No.

By the Court:

Q. Did you ever discuss that matter with him?

A. No.

Q. All you want to lead the court to understand is that he was a customer there in the bank, deposited money in the bank, and withdrew it, like any other customer?

A. Yes. We had discussed everyday subjects. I don't [fol. 143] recall anything like economics, or anything along that line.

Q. You never discussed any sound money theories?

A. No. He was very prompt in his payments. We made him an F.H.A. loan, and we checked up pretty thoroughly before we made it.

Ellen Constable, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

A. Mrs. Ellen Constable.

Direct examination.

By Mr. Gallagher:

Q. Mrs. Constable, do you know Mr. Wixman here?

A. As a neighbor and as a colleague.

Q. How long have you been neighbors?

A. Since 1935.

Q. When you say neighbor, you live in the immediate vicinity?

A. I live across the street from Mr. Wixman.

Q. You have mutual friends, do you?

A. Yes, we do.

Q. Do you visit in his home?

A. Yes, I have.

Q. Has he visited in your home?

A. No, he has not.

[fol. 144] Q. On how many occasions have you been in his home?

A. Just twice.

Q. Have you discussed Mr. Wixman with people in the neighborhood?

A. Yes, I have.

Q. Have you talked to Mr. Wixman in the neighborhood, that is, on the street and sidewalk, and in other neighbors' homes besides your mutual homes?

A. At least twice a day.

Q. Has Mr. Wixman ever made any statement in your presence from which you inferred or concluded that he might not be attached to the principles of the Constitution of the United States?

A. He has not.

Q. Or that he might not be well disposed to the good order and happiness of the United States?

A. No, sir.

Q. Do you know what Mr. Wixman's reputation is in the vicinity where he lives as a person who is loyal to the principles of the Constitution of the United States?

A. I believe that he has a very fine reputation. I have never heard anything contrary.

Q. Do you believe if he were given citizenship he would be a good citizen?

A. I do, indeed.

[fol. 145] Q. Attached to the principles of the Constitution?

A. Yes.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Mr. Gallagher: That is all.

Cross examination.

By Mr. Burns:

Q. Mrs. Constable, what is your address?

A. 857 North Kenmore.

Q. Are you a neighbor of Mr. Wixman's at that address?

A. Yes.

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Q. You said he lived across the street?

A. Yes, he does.

Q. Has he been there continuously?

A. Yes, he has.

Q. Without a break?

A. I am not in a position to say that by direct evidence, but for a period of years I have seen him at least twice a day. He was out mowing the lawn, or something, when I passed.

Q. How long have you lived there?

A. Since 1935.

Q. Was he living there when you moved into the neighborhood?

A. I believe so. I know he was in 1937.

Q. You referred to him as a colleague. What did you mean by that?

[fol. 146] A. I mean he was on the faculty with me in the Los Angeles City College.

Q. You are a teacher in the Los Angeles City College?

A. Yes.

Q. In what faculty of the Los Angeles City College do you teach?

A. I teach in the dental department.

Q. Did you, with or without occasion, discuss with Mr. Wixman the matters and manner of presenting his own courses in economics and history?

A. No, except I asked him his advice as to how to make out examinations, because he was a very fine teacher.

Q. Nothing about the subject of his teachings?

A. I knew nothing about the subject.

Q. Did you ever have any discussion about political and economic things, about forms of government and economics?

A. Not the ideology of government.

Q. Did you ever discuss the United States?

A. I never discussed the Constitution of the United States.

Q. With anyone?

A. With anyone.

Q. Did you and Mr. Wixman ever have any conversation, either just the two of you, or in the presence of others, concerning what would be desirable as a form of government here; whether Communism or some other form would

[fol. 147] be preferable to our present form, or whether it would not, or anything of that sort?

A. No.

Mr. Burns: That is all.

Redirect examination.

By Mr. Gallagher:

Q. Did he ever advise you to go Communist at school?

A. No, he did not.

Q. Did he ever attempt to propagandize you to Communism?

A. No, our conversation about Communism was more of a facetious gossip about Red baiters on the campus.

Mr. Gallagher: That is all.

Walter Varnum, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. Walter Varnum.

Direct examination.

By Mr. Gallagher:

Q. Dr. Varnum, what is your occupation?

A. I am an instructor at the Los Angeles City College.

Q. In what department?

A. Psychology.

Q. Where?

[fol. 148] A. At the Los Angeles City College.

Q. How long have you been such?

A. Since about 1930.

Q. Are you or are you not in any way connected with the United States Army?

A. I am on inactive status as an officer in the United States Army.

Q. Do you know Mr. Wixman?

A. Yes, sir.

Q. How long have you known him?

A. Since about 1930.

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Q. How often would you have occasion to see him from the time that you first knew him until now?

A. Until about 1939 practically daily during the week days.

Q. For how many years would that be daily?

A. About nine years.

Q. And since then how often?

A. Very infrequently. I am not on the campus any more.

Q. Have you talked to him on these various occasions when you would see him?

A. Yes, sir.

Q. Did he attempt to propagandize you to Communism?

A. Never.

Q. Or attempt to induce you to go to Communist schools?

[fol. 149] A. Never.

Q. Did he ever make any statement in your presence which led you to believe he might not be attached to the principles of the Constitution of the United States?

A. No.

Q. Or well disposed to the good order and happiness of the United States?

A. No.

Q. Do you know what his reputation was on the campus at the time he was teaching there, as a person loyal to the United States Government?

A. I believe his reputation for loyalty was very excellent, of the highest type.

Q. Do you believe if he were a citizen he would be a good citizen?

A. I do.

Q. Attached to the principles of the Constitution of the United States?

A. Yes.

Q. And well disposed to the good order and happiness of the United States?

A. Yes, sir.

Q. Did you ever hear any students make any complaint of Mr. Wixman, that he was disloyal, or attempting to propagandize or teach the principles of Communism?

[fol. 150] A. No.

Mr. Gallagher: That is all.

Cross examination.

By Mr. Burns:

Q. Did any student ever talk to you at all about what Mr. Wixman was teaching?

A. I have had students comment they thought him a good teacher.

Q. Did they ever discuss the manner in which he was teaching, or the subject, or the way he presented it?

A. Not particularly; only he was an interesting teacher.

Q. Did you ever discuss with him what he was teaching, or how he was teaching?

A. No, sir.

Q. Did you ever have occasion to speak to him at all about the Constitution or Communism, particularly matters which related to forms of government, so that he expressed his own opinion on that subject?

A. No, sir, I never had occasion to talk about it.

Mr. Burns: That is all.

[fol. 151] Clifton Rosett, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Clifton Rosett.

Direct examination.

By Mr. Gallagher:

Q. Mr. Rosett, tell us your occupation, please.

A. I am the superintendent of the Angelus Meat Company.

Q. How long have you held that position?

A. I would say about six years.

Q. Did you ever attend the City College of Los Angeles?

A. Yes, sir, I did.

Q. How long?

A. About 1934 and 1935.

Q. Did you know Mr. Wixman there?

A. Yes.

Q. Did you ever attend any of his classes?

A. Yes, sir.

Q. What classes did you attend?

A. I had a history class with him.

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Q. You are an Army man, are you?

A. Yes, sir.

Q. What position did you hold in the Army?

A. I was chief clerk, provost marshal's office, Berlin.

[fol. 152] Q. While at the City College did you belong to any societies?

A. Yes, I did.

Q. What societies?

A. I belonged to the Iota Delta Pi.

Q. This Iota Delta Pi, did you have a sponsor for that organization?

A. Yes, sir.

Q. Who was that?

A. Mr. Wixman.

Q. Either in the classroom or out of the classroom, either with him individually, or in the presence of others, did you ever hear Mr. Wixman make any statement which led you to believe he was not attached to the principles of the Constitution of the United States?

A. No, sir.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No, sir.

Q. If he was made a citizen, in your opinion would he be a good citizen?

A. Yes, sir.

Q. Attached to the principles of the Constitution of the United States?

A. Yes, sir.

[fol. 153] Q. Well disposed to the good order and happiness of the United States?

A. Yes, sir.

Q. Did he ever recommend to you or to others in your presence that you or they should attend Communist schools?

A. No, sir.

Q. Directing your attention to the lectures that Mr. Wixman would give, or the meetings that he would attend, of various groups of the school, would he in his lectures ever refer to systems of government in other parts of the world than in the United States?

A. No, sir, not in the class I took with him.

Q. In teaching history were references ever made to Fascism, Communism or Nazism?

A. There would be, yes.

Q. Did he ever, in discussing those different systems of political philosophy, ever give you to believe that he favored either Communism or any other system over the system of government that we have here in the United States?

A. No, sir.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. I believe you have testified that you took one class only with Professor Wixman, is that correct?

[fol. 154] A. Yes.

Q. That was for one semester, two semesters, or what?

A. I believe it was for the entire year. It was world history.

Q. Was that modern history, ancient history, or a combination of both?

A. It was from ancient to modern; more or less, I imagine, a survey course. We went quite rapidly.

Q. You covered the whole history of the world down to the present day, is that right?

A. That's right.

Q. Was there any stress laid in this course on economic aspects of history?

A. No, sir.

Q. Especially with regard to the later day, since Communism has become a vital force in the world?

A. No, sir.

Q. Did you ever hear Mr. Wixman say anything about Communism out of the classroom?

A. No, sir.

Q. Did you ever hear him say anything about it at all in the classroom?

A. Except when he got down to modern times, he naturally had to say there was some system of Communism.

Q. That there was a revolution in Russia, there was a [fol. 155] communistic government in Russia, and let it go at that?

A. Yes.

Q. Did you ever have occasion with him, out of the classroom, to discuss the Constitution of the United States?

A. No, sir.

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Q. Did you ever discuss with him the economic aspects of American life, what type of government was best for the economic well being, and things of that sort?

A. No, sir.

Q. You were a member of the Iota Delta Pi historical honorary society of the school?

A. That is correct.

Q. Mr. Wixman was sponsor at the time you belonged to it?

A. Yes.

Q. I believe you have told Mr. Gallagher he did not recommend your joining any Communist, going to any Communist schools at any time you were a member of the Iota Delta Pi Society?

A. That is correct.

Q. Did he ever recommend any clubs or associations of any kind for students to enroll in?

A. No, he never did.

Q. Specifically, did he ever mention the National Students League which later became the American Students [fol. 156] Union?

A. No, sir.

Q. Did you ever join that association yourself?

A. No, sir.

Mr. Burns: That is all.

By the Court:

Q. Mr. Rosett, when this matter of history came up, didn't he discuss the Constitution of the United States?

A. It was more or less of a survey course and it had to go very rapidly. There was outside reading we generally did, in order to get a full understanding of what was going on.

Q. When you reached that point in the study, what reading did he designate on the Constitution of the United States.

A. I can't remember right now. I know every book he recommended was in the City College library, so they must have been correct books.

Q. You don't remember what they were?

A. No, I couldn't say offhand.

Q. Did he elaborate much, when he reached that point in American history, about the Constitution?

A. As I said, it was very rapid. There was not too much time. It was a survey course. I heard his lectures, and there were certain books you would have to read, and from those books you would naturally have to draw your own conclusions.

[fol. 157] Q. Did you graduate from school?

A. Yes.

Q. That is, before you went into the Army?

A. Yes.

Q. When did you go into the Army?

A. At the beginning of '44.

Q. You were there at the time of the surrender in Europe?

A. Yes.

Q. Then you went into Berlin, and were in the provost marshal's office?

A. Yes, sir.

Q. Did you ever have any conferences with him in private during the time he was an instructor?

A. No, sir.

Q. All of your contacts with him were in the classroom, when he was lecturing?

A. Or at meetings of the Iota Delta Pi.

Q. How close was your fraternity?

A. Like everybody there, there was no special emphasis on it.

Q. Were there any sections or groups of the fellows there in that fraternity, or girls?

A. No, sir, it was for students, open to certain grades that were recommended by the faculty.

[fol. 158] Q. What did you major in?

A. Journalism.

Q. Did you take up economics?

A. Yes.

Q. Who was your teacher? It was not the petitioner?

A. No.

Q. How did you happen to go into another class than into his class in economics?

A. When I was there things were pretty crowded. The man who came along quickly could get the teacher he wanted, although he was just entering. There wasn't any preference given. I was the last on the register, and had to take what was left over.

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Q. It wasn't your preference that you were in another class?

A. At that time I did not know Mr. Wixman.

Q. Did you know the other teacher at that time, into whose class you went?

A. No, sir. I can say that Mr. Wixman's classes were very popular. If you wanted to get into them, you had to make an effort.

Q. Did you make an effort?

A. At that time I did not know Mr. Wixman.

Q. You did not know anything about his popularity as a teacher?

[fol. 159] A. No, sir. I registered late, as a matter of fact.

Lester W. Roth, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Lester W. Roth.

Direct examination.

By Mr. Gallagher:

Q. What is your occupation?

A. I am vice president of Columbia Pictures.

Q. An attorney at law?

A. Yes.

Q. Do you know Mr. Wixman, the petitioner?

A. Yes.

Q. How long have you known him?

A. Approximately eight to ten years.

Q. How intimately acquainted with him are you?

A. Oh, I have met him more or less regularly over that period of time and have talked to him.

Q. Have you had many conversations with him?

A. Quite a number.

Q. Have you ever heard him make any statement from which you inferred or concluded that he might not be attached to the principles of the Constitution of the United States?

A. No.

[fol. 160] Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No.

Q. Do you believe if he is given citizenship that he will be a good citizen?

A. Yes.

Q. Attached to the principles of the Constitution of the United States?

A. Yes.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Did you ever discuss with him the Constitution, or the good order and happiness of this country?

A. Not specifically, but I have had many general discussions with him, which probably included it.

Q. Did you ever discuss the guarantee of the right to private property in the Constitution?

A. No, sir.

Q. Or anything bearing on it?

A. No, sir, not specifically.

Q. Did he ever discuss Communism or Socialism, or any [fol. 161] similar, or somewhat similar forms of government?

A. I think they were included in the general discussion that we had.

Q. Can you remember, Mr. Roth, Mr. Wixman having expressed an opinion one way or the other on the subject of what we might call radical forms of government, communistic or socialistic?

A. I don't recall any specific opinion being expressed, because specifically I never asked him the question. I simply made up my own mind through general discussions that we had, as to what his disposition was.

Q. Did you ever, for example, hear him criticize some of the officials of the present government of Russia?

A. Did you say Russia?

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Q. Yes, present day Russia?
A. No.

Mr. Burns: That is all.

Redirect examination.

By Mr. Gallagher:

Q. Did you ever hear him discuss the present government in Russia?
A. No.
A. Judge Roth, do you recall whether or not to your knowledge there was a suit where the County of Los Angeles or State brought action to recover some money from Mr. [fol. 162] Wixman for wages paid him as a teacher, and whether that action was dismissed with prejudice?
A. I think I represented him in that action, and it was dismissed.
Q. Do you know of your own knowledge whether it was dismissed with prejudice?
A. My recollection is that it was.

Mr. Gallagher: That is all.

Recross examination.

By Mr. Burns:

Q. That, Mr. Roth, was a suit by the City of Los Angeles to obtain some $30,000.00 in back pay from Mr. Wixman, who had received it as a teacher when he was not a citizen? Wasn't that the suit?
A. No, my recollection is that you have added a cipher. It's $3,000.00, as I remember it.
Q. In other words, a year's salary.
A. Not salary for the whole year. That's my recollection.
Q. That was the idea of the suit, that they would recover what they had paid him, since he was not a citizen when he was holding the job?
A. No, I don't think that was the idea. It's been some years ago, and I haven't refreshed my recollection from the files, and actually I can't give you what the issues in the [fol. 163] suit were. I know the suit was dismissed; a settlement was made, and Mr. Wixman was paid something around $3,000.00 or $3,500.00. That is my recollection of the matter, without refreshing my memory.

Q. Was this the full settlement of that matter, that he was paid the balance of the year's salary, or a year's salary, whatever it was, and resigned?

A. Plus something in addition, as I recall. In other words, he was paid some back pay, and possibly something in additional back pay.

Q. The balance of the year's salary, perhaps, or something that was withheld?

A. No, not withheld, except back pay. As I recall it, we settled on the basis of back pay plus something additional. That is my recollection.

Redirect examination.

By Mr. Gallagher:

Q. Do you recall what the additional was?

A. Some additional salary, some future salary, and the suit, as I recall, was not based on the issue that he was not a citizen. I don't specifically recall what the issue was, but I am sure that was not it.

Q. The plaintiff in the suit was the Los Angeles City Board of Education?

A. That's right.

[fol. 164] Q. They sued Mr. Wixman?

A. That's right.

Q. For money?

A. I am not sure whether it was for money, or for his status.

Mr. Gallagher: That is all. Call Mr. Lieberman.

Jacob J. Lieberman, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Jacob J. Lieberman.

Direct examination.

By Mr. Gallagher:

Q. Mr. Lieberman, please tell us your occupation.

A. I am a lawyer.

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Q. Do you hold some position in the B'nai B'rith?

A. Past grand president, District No. 4, which comprises the eight states west of the Rocky Mountains, and British Columbia. I am vice chairman of the youth work.

Q. Do you know Mr. Wixman?

A. Yes.

Q. How long have you known him?

A. Something over ten years. I would not be able to say how many more. It's a long period.

Q. During this period have you known him more or less [fol. 165] intimately, or just casually?

A. The last few years more or less intimately. Earlier, casually.

Q. Have you ever heard Mr. Wixman make a statement, either to you personally or in your presence, that led you to expect and believe he might not be attached to the principles of the Constitution of the United States?

A. I have not.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No, sir.

Q. If he is made a citizen, in your opinion will he be a good citizen?

A. That's my opinion.

Q. Attached to the principles of the Constitution?

A. Yes, sir.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Q. Do you know of any reason why, in your opinion, Mr. Wixman should not be granted citizenship?

A. I know of none. I personally would recommend it.

Q. Mr. Lieberman, did you have anything to do with the employment of Mr. Wixman?

A. His present employment, yes. I am on the committee [fol. 166] that passed on his application for his present position as executive director—they just changed the name. I think it is now called the Community Bureau of Personnel Relations.

Q. In that connection did you check into Mr. Wixman's suitability for the position, from the point of view of loyalty?

A. I did not check into it just in that connection, because the last few years, in connection with other work, I had occasion to meet him often and to discuss various subjects with him that gave me an insight into his thinking as an American. I came to the conclusion that he was attached to the principles of our government, rather than to the contrary.

Also, since the subject of Communism has been inquired into here, it has been my understanding that Communism is anti-religious. I have found him pro-religious. I have found that in his son also. In fact, he came into my office one time, and very proudly presented to me for my reading a sermon his son had delivered on religion, which was definitely pro-religious.

Q. Did you know his son in your past work?

A. I have met the boy in my office and in his home. To that extent I formed a judgment of the boy; not intimately.

Q. Would you say the son is in any way communistically inclined?

A. In no way.

[fol. 167] Mr. Gallagher: That is all.

Cross examination.

By Mr. Burns:

Q. Have you ever had any discussions with Mr. Wixman himself on the subject of Communism?

A. Not on Communism specifically. We have discussed various political and economic theories, and incidents of the day, in the last few years.

Q. Those discussions that you speak of, between you and Mr. Wixman, date back only a few years, since the time you have become, as you put it, intimate with him?

A. They date back five or six or seven years.

Q. The time you say you became an intimate, not a casual acquaintance?

A. That's right.

Q. I think you made that distinction?

A. That's right. Prior to that——

Q. Have you ever heard any criticism——

The Court: State what you wanted to say.

A. Prior to that period of at least five or six or seven years, that prior period being the casual period I refer to,

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I had no discussions with him during that time of that nature. It is during the last five to seven years, when I used to see him frequently in my office, once at his home, and on a number of occasions in the East when we met at [fol. 168] conferences and conventions, we would visit each other back and forth in our rooms, and have meals together, and have discussions during the recesses of those conferences.

By Mr. Burns:

Q. How long has Mr. Wixman been employed by your group?

A. That's rather recent. I would say it's a matter of a few months, that is, by this present local group. He was employed by the B'nai B'rith nationally for several years prior to that.

Q. Would the period of your general intimacy with him begin about the time he began employment with the B'nai B'rith? Did you see him more frequently from then on, and get to know him better?

A. Yes.

Q. The periods when you only knew him casually were earlier than that?

A. That is correct, although there was a period in between when he was director of some of our work at one of our centers in the social service agency. During that period I came to talk with him from time to time because of my interest in youth work.

Q. He was then employed by the B'nai B'rith?

A. No, this was prior to his employment by B'nai B'rith. He was employed by the Hollywood Jewish Center Association.

Q. You say you have discussed prior affairs with him, [fol. 169] and that you have concluded from those discussions that he is attached to the principles of the Constitution of this country, is that correct?

A. That is correct.

Q. What did you discuss which caused you to form that opinion? What did he say?

A. We would begin discussing the trends in government. It would lead us into the discussion of economic injustices, inequities, as well as the balance of one system against another.

We discussed, for example, American principles, and the extent to which improvement might be made in the performance of and observations of American principles, rather than the abandonment of them.

I got the impression, instead of his wanting some foreign or other system, what his ideal was was to see that we had more of our American system practiced and prevalent in these countries.

Q. There has been a great deal of history made in the world in the last decade. Do you ever recall discussing with him anything which happened in the United States, and world affairs, actions of other countries,—Poland, Italy, Russia, Great Britain?

A. We had some reference to those in connection with a discussion of the persecution of the Jews.

[fol. 170] Q. Leaving political things out, which I don't think anybody condones in this country, did you ever discuss the action of the present Russian Government, the envelopment of Poland, Finland, the Balkan States?

A. I don't think we ever discussed the Russian Government in its relation to its neighbors, or to other governments.

Q. You never did?

A. No.

Mr. Burns: That is all.

By the Court:

Q. Mr. Lieberman, did he ever open up, or was there any discussion between you of the theory of extending the Marxian philosophy to other countries?

A. I never heard him say anything of that kind. He never expressed that sort of a theory. We never discussed that specifically, but we discussed the trends in political forms around the world, such as the fascistic trend in one direction, and the communistic trend in another direction. And, as I remember, it seemed to be accepted by both of us, in our expression, that totalitarianism was the trend abroad.

Q. What did he say?

A. We both said——

Q. I think I know what you said.

A. In our exchange of views I felt he was seeing such things as I did. In other words, we found ourselves in ac-

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cord in designating totalitarianism. We were discussing [fol. 171] trends between totalitarianism forms and totalitarianism trends abroad.

Q. When do you recall having discussed any such matter, approximately?

A. It would be either in one of our talks in New York or Washington, which would be about three or four years ago, and perhaps prior to that in one of our talks in my office.

Q. With respect to the filing of a petition for naturalization, when would it be you had your first talk with him in reference to that?

A. I would not know when he filed his petition. I learned of this proceeding only recently, when he dropped into my office one day and asked me if I would come here and testify. He explained what his situation was. Prior to that I did not know anything about his situation or status. I took it for granted he was a citizen.

Q. How frequently have you seen him in the last three or four years—I believe you said five or six or seven,—and conversed with him about matters of general interest?

A. I would say it would come in bunches. I would see him several days in succession for a week, and then see him sometimes three or four weeks in a row; then probably I would not see him for three months; then again there would be a series of these meetings.

Q. On those occasions upon which you saw him, during [fol. 172] that period would you discuss anything except matters of interest to you, your people and his people?

A. Most of the time they were only the matters of business, or matters of interest of those movements we were working on; but it would invariably lead to a social exchange, and I would ask him about his family and his wife and son; then something about our mutual friends, and that usually led into a general discussion. I would not say that these general discussions came up on every occasion. They would probably be on an average once in about a dozen visits with each other.

Q. Did you discuss the war at all? I don't mean the conditions in Palestine, but the war generally?

A. There were several times when we discussed the war, and particularly in relationship to the prospect of his son going into the service. He and his wife just took it for

granted he would go. There was not any attitude of resentment, regret or evasion. He just expected it.

Q. During what period of your contacts with him was that matter discussed?

A. About a year ago; somewhere between one and two years ago.

Q. Was it during the shooting period of the war, or afterward?

A. No, during the shooting period. How long is it now? Probably I had better orient myself. Was it over a year [fol. 173] now since the shooting stopped?

Q. Yes.

A. It was last year.

Q. You did not discuss any of those matters with him prior to the invasion of Poland?

A. I don't think so.

Q. The invasion of Poland by the Nazis?

A. No.

Q. Did you ever have any discussion or conversation with him specifically about the Constitution of the United States?

A. Not specifically, but constitutional principles we would discuss. I found invariably he talked in terms of upholding the principles that are a part of our Constitution. There was never any criticism or fault-finding of the principles of our Constitution. We did not discuss it as a part of the Constitution; we merely discussed it as a theory of government, a part of the constitutional structure.

Q. You don't know what his economic theories were with respect to private property?

A. Just in connection with general discussions I have referred to. I got the impression that he accepted that property status just as I did. The only criticisms I ever heard him voice were some injustices being perpetuated, but nothing against the system as such.

[fol. 174] Q. By the system as such, you mean——

A. I mean the system of private property ownership, the capitalistic system we here have referred to so much, as distinguished from the communistic or socialistic system.

The Court: That is all.

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JAMES ROTH, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. James Roth, 900 North Kenmore Avenue, Los Angeles.

Direct examination.

By Mr. Gallagher:

Q. Mr. Roth, what is your occupation?

A. Furniture dealer.

Q. What organization do you belong to?

A. I don't belong to any organizations, sir.

Q. Do you know Mr. Wixman here?

A. Yes, I do.

Q. How long have you known him?

A. About seven or eight years.

Q. How intimately have you known him?

A. Just as a neighbor.

Q. Neighbors?

A. Yes, sir.

Q. How close are you a neighbor to him?

[fol. 175] A. Well, just the same as any other; once in awhile saying hello or "Good morning, neighbor."

Q. Do you live in the same block?

A. Yes, sir, I -ive just across the street from him.

Q. You have mutual friends there in the neighborhood?

A. Yes, we have.

Q. Do you know what Mr. Wixman's reputation is in the vicinity where he lives, as a person who is loyal to the Constitution and to the Government of the United States?

A. Yes, I know he is loyal.

Q. Has Mr. Wixman ever said anything in your presence that led you to believe he was disloyal to the Constitution of the United States?

A. No, he has not.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No.

Q. Do you believe if he is made a citizen he will be a good citizen?

A. I am sure he will, sir.

Q. Well disposed to the good order and happiness of the United States?

A. Yes.

Q. And attached to the Constitution?

A. Yes.

[fol. 176] Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Have you ever had occasion to discuss the Constitution, and particularly economic things, that is, forms of government, and guarantees of private property, and that sort of thing?

A. No, I never did.

Q. Never at all?

A. No.

Mr. Burns: That is all.

Mildred Stone, called as a witness by an/ on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. Mrs. Mildred Stone.

Direct examination.

By Mr. Gallagher:

Q. Mrs. Stone, what is your occupation?

A. I am a retired school teacher.

Q. When you taught, where was it you taught?

A. At the Utah State School, East First Street.

Q. Were you a member of any organization of which, to your knowledge, Mr. Wixman was a member?

A. I was.

Q. What was that?

[fol. 177] A. Classroom Teachers Federation, a federation which worked very hard for the betterment of teachers in schools.

Q. In connection with that organization, how long have you known Mr. Wixman?

A. About 15 years.

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Q. During that time would you see him frequently?

A. Very frequently; every meeting; and I also attended every meeting he was attending. I was quite an active worker.

Q. Some reference was made to the fact today that at a meeting of this organization Mr. Wixman stated that he was going to teach Marxism in his classes. Tell us whether or not you were ever present at any meetings addressed by Mr. Wixman?

A. Yes, Mr. Gallagher, I have been at one or two of those meetings. They were dinner meetings, mostly meetings with legislators, at which all teachers were invited.

Q. Did you ever hear Mr. Wixman make the statement that he intended to teach Marxism in his classes?

A. I did not. I was present at that dinner. They were allowed three minutes speech. Mr. Wixman did not make a statement about teaching Marxism.

Q. Are you sure that Mr. Wixman only spoke on one occasion?

A. No, I heard Mr. Wixman on two or three occasions.

Q. Did you ever hear Mr. Wixman make any statement [fol. 178] from which you inferred that he might not be attached to the principles of the Constitution of the United States?

A. No, on the contrary. I also am a naturalized citizen. I also made a statement once, in making a comparison, and Mr. Wixman told me I should not make any complaints of the country of my adoption, because he was so happy to come to this country, and that I should never make any complaints. I considered him a very good citizen; better than I was, for making that remark.

Q. Did you ever hear him say anything that made you believe he was not disposed to the good order and happiness of the United States?

A. Never.

Q. Do you believe if he is given citizenship he will be a good citizen?

A. Very good.

Q. Attached to the principles of the Constitution?

A. Yes.

Q. And disposed to the good order and happiness of the United States?

A. Yes.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Mrs. Stone, you started to say, I believe, that you [fol. 179] were present at the meeting where Mr. Wixman was supposed to have made the remark that he intended to teach Marxism in his classes. Then later you said that he had given addresses at several of the meetings. Apparently you have some way in your own mind of fixing the meeting at which he was supposed to have made that remark. Was there some discussion of it afterward?

A. No. If he had made that remark, he would have been accused by his own members. I think it would have appeared in the papers, and also they would have taken it up immediately.

Q. You never heard him make this remark?

A. Never.

Q. You never heard anybody else say he made it?

A. That is the first I heard of it. I was quite surprised when I heard today he ever made such a remark.

Q. Did you yourself ever have occasion to discuss economic aspects of the government of the United States with Mr. Wixman?

A. Yes.

Q. Did you talk about the desirability of this type of capitalistic government, and the right to private property?

A. Well, capitalistic was never mentioned in that sense. About private property, I know he owns property. I do too. There was never anything said against it.

Q. Was anything ever said for it? Did he ever uphold the constitutional guarantee to private property?

[fol. 180] A. Yes, I think so. He wants to get all the private property he can get. So do I. We have been together a great deal. His family and my family spent the week ends together. I always thought he was one of the most broad minded of men, and listened to all sides, and gave me advice.

Q. I am willing to concede he is anxious to get all the private property he can. I think we all are. Did he ever talk about the Constitution, in regard to private property?

A. No.

Q. Whether there should be such a thing as private property?

A. No.

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Mr. Burns: That is all.

The Court: We will have a recess until next Friday, a week from today, at 10:00 o'clock.

(Whereupon, an adjournment was taken until Friday, January 31, 1947, at 10:00 o'clock a. m.)

[fol. 181] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Paul J. McCormick, Judge Presiding

No. 126,536

In the Matter of the Petition of SHULIM WIXMAN, for Naturalization

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California,
Friday, January 31, 1947.

Appearances:

For the Petitioner: Leo Gallagher, Esq., and Herbert Ganahl, Esq.

For the Government: Frank J. Burns, Esq., Naturalization Examiner.

[fol. 182] Los Angeles, California, Friday, January 31, 1947
10 A. M.

The Clerk: No. 126,536, Petition of Shulim Wixman for Naturalization.

Mr. Gallagher: Ready for the petitioner.

Mr. Burns: Ready for the defendant.

The Court: Proceed, gentlemen.

Mr. Gallagher: We have a number of witnesses which we wish to put on to show his attitude toward the government.

The Court: Very well.

Mr. Gallagher: Mr. Lester, please.

HARRY P. LESTER, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Will you state your name, please?
The Witness: Harry P. Lester.

By Mr. Gallagher:

Q. Mr. Lester, what is your occupation?
A. Manufacturer.
Q. What position do you hold?
A. My wife and I own the company.
Q. I beg your pardon?
A. My wife and I own the company.
Q. I asked you what positions you hold here in the com-
[fol. 183] munity. Do you hear me?
A. Yes. I am the present president of the Automatic Automotive Parts Rebuilders Association; past president, last year, of the California Automatic Booster Club.
Q. Are you connected with any Veterans organizations?
A. Yes; with the Beverly Hills Post No. 53 and past member of the Hollywood Post.
Q. Do you belong to any other organizations?
A. Yes, to the Masons.
Q. Are you connected with B'Nai B'Rith?
A. Yes, a member of the Beverly Hills Lodge of B'Nai B'Rith.
Q. Do you know the petitioner here, Mr. Wixman?
A. I have known Mr. Wixman about five to six years.
Q. How intimately have you known him?
A. I have seen him approximately twice a month at the Post meetings, when he was in town, and I have visited at his home twice, and met his family.
Q. Aside from when you were in his home, on these other meetings have you talked with him?
A. A number of times.
Q. Will you tell us what matters, in general, you would discuss?
A. Generally Veterans' matters, and at his home there were a number of other people and a number of things were
[fol. 184] discussed; generally over my head, as I am merely a provincial businessman, and they talked mostly of arts and science, and paintings, and things of that sort.

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Q. Were you ever present when current affairs were discussed, aside from Veterans' problems?

A. If there were any discussed there, I was present.

Q. Did you ever hear Mr. Wixman say anything that led you to believe that Mr. Wixman was not attached to the principles of the Constitution of the United States?

A. No.

Q. Did you ever hear him say anything that led you to believe that he was disloyal in any respect?

A. No, never.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No, never heard any remarks, even at his home, of anything of that sort.

Q. Do you believe that if he were made a citizen, he would be a good citizen.

A. Yes. And I have met his wife and his son, and I believe his son is about as American as apple pie a la mode.

Q. You feel, therefore, if he were given citizenship he would be a good citizen?

A. Yes.

Q. And attached to the Constitution?

[fol. 185] A. Yes.

Q. And well disposed to the good order and happiness of the United States?

A. Yes.

Mr. Gallagher: That is all. Thank you.

Cross-examination.

By Mr. Burns:

Q. Mr. Lester, in your discussions with Mr. Wixman did you ever discuss his views on economic matters, matters of Communism, and things of that sort?

A. Never on Communism. I am a Republican, and I think he is a Democrat. We probably discussed labor, and things of that sort.

Q. Did you ever discuss with him whether or not an individualistic or a collectivist system of government was the best?

A. No.

Q. Did you ever talk about the Constitution of the United States and its economic aspects?

A. Only in the Veterans organization.

Mr. Burns: That is all for me, your Honor.

(Witness excused.)

Mr. Gallagher: Mr. McWilliams.

[fol. 186] CAREY MCWILLIAMS, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Will you state your name, please?

The Witness: Carey McWilliams, M-c-W-i-l-l-i-a-m-s.

By Mr. Gallagher:

Q. Your occupation?

A. I am an attorney.

Q. Anything else besides an attorney?

A. Oh, I write a book occasionally.

Q. You have written a number of books and lectured; is that right?

A. That's right.

Q. Have you ever held any public office?

A. Yes, I was for four years Commissioner of Immigration and Housing in the State government of California.

Q. Do you know Mr. Wixman, the petitioner here?

A. I do.

Q. How long have you known him?

A. I have known Mr. Wixman I would say for six or seven years, something like that.

Q. During that period how frequently have you met him?

A. Oh, I have seen him quite frequently. I don't know [fol. 187] that I could give you a definite indication of how often each month, but I have seen him quite frequently.

Q. When you say you have seen him, you mean you have talked with him?

A. That's right. He has been in my home on numerous occasions.

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Q. You have discussed current events and other subjects with him?

A. That's right.

Q. Now, did Mr. Wixman ever state in your presence—make any statement that led you to believe or suspect that he might not be attached to the principles of the Constitution of the United States?

A. No, he never has.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. No.

Q. If he were made a citizen, do you believe that he would be a good citizen?

A. I certainly do.

Q. Attached to the Constitution, and well disposed to the good order and happiness of the country?

A. That's right.

Mr. Gallagher: You may examine.

[fol. 188] Cross-examination.

By Mr. Burns:

Q. Mr. McWilliams, have you ever discussed with Mr. Wixman the economic features of the present form of the American government, such as set forth in the Constitution?

A. I don't recall any conversations of that character. We have discussed politics locally, and state politics, things of that sort.

Q. Have you ever had any discussion with him about Communism?

A. No, I don't recall that I have.

Q. Have you ever had any discussion with him about the desirable economic arrangements, as to whether this country should be collectivist or individualistic in its economic setup?

A. No, not in those terms.

Q. Or anything like that?

A. No. We have discussed, as I have indicated, state politics and national politics, matters of that kind.

Q. Have you ever discussed Russia with him, and Russian policies?

A. No, I don't think I have.

Mr. Burns: That is all, Mr. McWilliams.
Mr. Gallagher: Thank you, sir.

(Witness excused.)

[fol. 189] Mr. Gallagher: Mr. Johnston.

JOSEPH JOHNSTON, called as a witness by and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Will you state your name, please?
The Witness: Joseph Johnston, J-o-h-n-s-t-o-n.

By Mr. Gallagher:

Q. Mr. Johnston, what is your occupation?
A. Teacher.
Q. Where?
A. Los Angeles City College.
Q. For how long a period?
A. Since 1930.
Q. Do you know the petitioner, Mr. Wixman.
A. I do.
Q. Did you know him at the time he was also an instructor of the school?
A. I did.
Q. Since he has severed his relationship with the school, have you had occasion to meet him and talk with him?
A. I have on occasions.
Q. Referring now to the school, can you tell me, if you know, what his general reputation at the school was as a person who was attached to the general principles of the Constitution?
[fol. 190] A. He was known as a very fine instructor, and he was known to be liberal in his political and economic views, but not radical, not communistic.
Q. Was any criticism made that he was not loyal to the institutions of the country,——
A. Never.
Q. —to your knowledge.
A. Are you speaking of his general reputation?

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Q. Yes.

A. Then the answer is, I have never heard that.

Q. Have you at any time, from the date you first met Mr. Wixman, have you at any time ever heard him make any statement which made you suspect or conclude that he might not be attached to the principles of the Constitution of the United States?

A. I have not.

Q. Or that he was not well disposed to the good order and happiness of the United States?

A. I have not.

Q. Do you believe that if he were given citizenship that he would be a good loyal citizen?

A. I do.

Q. You yourself are a citizen?

A. Yes.

Mr. Gallagher: That is all.

[fol. 191] Cross-examination.

By Mr. Burns:

Q. Mr. Johnston, what subject do you teach at the Los Angeles City College?

A. English.

Q. Have you ever had any discussion with Mr. Wixman, during the time that he was also on the faculty there, concerning the matter taught in his courses, in his economic and history courses?

A. Well, in our Faculty Men's Club there are usually general discussions going on rather constantly.

Q. Did he ever say anything to you or in your hearing regarding his teachings of economics with respect to the most preferable system of government to foster the most desirable economic situation?

A. I can't give you specific quotations, but in general discussions, which are rather free in our club rooms, I would say yes, that most instructors understand others' viewpoints. They speak quite freely.

Q. Did you ever hear Mr. Wixman say anything regarding Marxism in any of those discussions?

A. No, I don't believe so.

Q. Did you ever hear him say anything regarding Communism?

A. Communism is a word, and as a topic might have been [fol. 192] discussed, but I have never heard Mr. Wixman advocate Communism at any time.

Q. Do you ever recall discussing it at any time?

A. I don't recall specific occasions, except that all matters of this type are open to regular discussion in a free and informal manner within the club rooms.

Q. I understand that, Mr. Johnston, but do you recall any occasion on which Mr. Wixman expressed any opinions?

A. Will you put it the other way? I would have recalled it, but I never recall his advocating Marxism or Communism at any time.

Q. Did you ever talk about the institution of private property with him?

A. I should imagine that topic would have arisen within the range of our discussions, yes.

Q. Can you recall what he said about it?

A. I can't give you specific recollections, but I can tell you that my general recollection is quite accurate, that he had never advocated a socialistic or a communistic form of government in this country.

Mr. Burns: That is all, Mr. Johnston.

By the Court:

Q. I just want to ask you a question about the school out there. I do not quite understand how that school is established. Now, what I would like to get is what the college was, rather than as it is now.

[fol. 193] A. It is supported by the City and State.

Q. It is supported by the City and State?

A. It is.

Q. It is supported by the taxpayers?

A. That is right.

Q. The faculty is chosen in what manner?

A. It is chosen by the Superintendent's office, in conjunction with the personnel office of the Board of Education.

Q. The Board of Education of the City?

A. Of the City, and, of course, the County has some legal connections in terms of certification, as the State does too.

Q. The tenure is a tenure which is subject to the control of the appointing power?

A. I believe so.

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Q. On a contract for a number of years, or is that a matter subject to the control of the administrative agency?

A. I think you will find that is regulated under a probationary system. After instructors have served a probationary period, they are admitted to a permanent status, provided, of course, they do not in any way violate the basic laws, moral or legal.

Q. It appears from the evidence here that it is a two-year course?

[fol. 194] A. A two-year college.

Q. How do students qualify for entrance into the City College?

A. By graduation from high school or its equivalent.

Q. In other words, the initial year of the City College corresponds, in so far as qualifications are concerned, to the freshman year in the State university?

A. That is right. We have the freshman and sophomore years.

Q. Is the school accredited? I do not want to go into it too extensively, but I want to know something about it. Is the school accredited to the State university? As to graduates, for instance, who complete the second year creditably, are they generally admitted to the junior year of the university without further examination?

A. That's right, your Honor.

Q. What are the approximate ages of the students in the City College, or what were they during the period with which we are concerned?

A. Roughly eighteen to twenty.

Q. There is no post-graduate work there at all?

A. A student may continue studying there, but he would be continuing with other courses within the college. They are all within the first and second year college level.

Q. What is the nature of the certificate they receive upon [fol. 195] completion of that work?

A. It is known as the Associate *and* Arts degrees, which are also given by the other junior colleges and by the University of California.

Q. Does the curricula include specific subjects as in major universities? I am speaking where a student may major in some subject?

A. I think we cover all liberal arts in lower division work as given in the University of California, and in addition

we have what are known as the semi-professional courses, our own vocational college level courses.

Q. There is an elective system, I take it, then, so far as the entrant student is concerned, as to whether he should choose political science, economics, or sociology?

A. That choice is entirely his own.

Q. The ages you say are approximately from eighteen to twenty?

A. Approximately. I think that would be about the minimum, although there are some seventeen, and now, of course, with the Veterans they run much higher.

Q. A student who has not completed the courses in an accredited high school has to take an examination for entrance qualification?

A. He is required to have the equivalent of a high school diploma. He cannot enter unless he is a graduate or has the [fol. 196] equivalent, let us say, through his service record, or something of that type.

Q. Then, as I understand it, if he does not have a diploma from an accredited high school, then he is not required to take any examination if he may be able to supply the requisite qualifications by military service, or something of that kind?

A. Only if the military service corresponds to high school subjects.

The Court: That is all.

Mr. Gallagher: That is all. Thank you, Mr. Johnston.

(Witness excused.)

Mr. Gallagher: Mr. Conklin.

Rollin D. Conklin, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: Will you state your name, please?

The Witness: Rollin D. Conklin.

By Mr. Gallagher:

Q. Mr. Conklin, will you please tell us your occupation?

A. I am a certified public accountant.

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Q. Were you connected with the military service?

A. I was.

[fol. 197] Q. Do you know the petitioner, Mr. Wixman?

A. I do.

Q. Will you tell us how it happened that you became acquainted with him?

A. I was a student at the Los Angeles City College, the Junior College, from 1935 to 1937.

Q. While he was teaching there?

A. He was teaching there at that time, and I was in one of his classes.

Q. Did you take some of his courses?

A. I did.

Q. What courses do you recall that you took?

A. Pacific Coast History.

Q. Was that for just one semester, or more?

A. I think it was just one semester, as I recall.

Q. I didn't get the type of history it was.

A. Pacific Coast.

Q. Pacific Coast History?

A. The history of the Pacific Coast.

Q. Did that deal with the Pacific Coast of the United States?

A. Yes.

Q. From its early beginnings right down to today?

A. That is correct.

Q. Did he discuss the history of this State in that con-

[fol. 198] nection?

A. Yes.

Q. And politics?

A. Politics in the nature that it existed at the time we were studying it, as I recall.

Q. Do you know what Mr. Wixman's reputation on the campus was as to whether or not he was loyal or disloyal to the Constitution of the country?

A. Well, there was never any question as to his loyalty.

Q. What do you mean by that?

A. I mean that he was loyal, as far as the information that we heard or discussed, or knew about.

Q. After you left school, did you know Mr. Wixman after he left the school?

A. I met Mr. Wixman several times on the street downtown. I didn't know him after he left the school.

Q. Now, referring to that time, will you tell us whether or not in class or out of class you ever heard Mr. Wixman make any statement that led you to suspect that Mr. Wixman might not be attached to the Constitution of the United States?

A. No.

Q. Or that he was not well disposed to the good order and happiness of the United States?

[fol. 199] A. No.

Q. Do you believe that if Mr. Wixman is given citizenship he will be a good and loyal citizen?

A. I do.

Q. Mr. Conklin, did you engage in any outside activities in connection with clubs, or anything of the kind?

A. At Junior College?

Q. Yes.

A. No. I was a member of one honorary accounting and law society. That was all.

Q. Did you attend any meetings outside of school where Mr. Wixman was a sponsor or a speaker, or anything of that kind?

A. No.

Q. Did Mr. Wixman ever in your presence make any statement that led you to suspect that he might not be well disposed to the good order and happiness of the United States?

A. No.

Mr. Gallagher: That is all.

Cross-examination.

By Mr. Burns:

Q. Mr. Conklin, in the course of this course on Pacific Coast History, did Mr. Wixman discuss the economic history of the Pacific Coast?

A. Well, yes, there was some discussion of economics [fol. 200] in connection with the development of the history of this coast.

Q. Did he ever indicate what he felt was the best political system to foster or the proper economy?

A. No.

Q. Did he have any criticism of the economic conditions which existed during the Spanish rule in the United States,—in California, I mean?

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A. Yes, definitely.

Q. Do you recall what those criticisms were?

A. Well, generally it was discussion of the way in which they came as conquerors and kept the Indians in some cases, well, practically under their will.

Q. Did he ever discuss the economic situation in this State during the time of the Mexican rule?

A. He probably discussed it. I don't remember the particular discussion at this time.

Q. Did he discuss the economic situation in this State at the time he was teaching it?

A. The current situation?

Q. The current situation at that time.

A. No.

Q. Did you ever hear him make any recommendations of economic systems and forms of government?

A. No.

[fol. 201] Q. Did you ever hear him make such recommendations, or did you ever hear him discuss any of these matters apart from the classroom?

A. No.

Mr. Burns: That is all, Mr. Conklin.

By the Court:

Q. I just want to ask you a question or two, Mr. Conklin.

A. Yes, sir.

Q. Did he discuss the origin of property rights on the littoral Pacific Ocean, and the community property rights of California, Oregon and Washington?

A. I don't recall it, your Honor, whether it was discussed or not, at this time.

Q. I know it is a long time ago.

A. Yes, and my work requires knowing about community property, so I don't know whether it was discussed there or in my law course.

Q. Do you know whether he commented or discussed or animadverted upon the difference between the property rights under the Spanish or Mexican regime and that of other States of the United States?

A. No, I can't recall that.

Q. You do not have a very vivid recollection of the economic view?

A. No, it was mostly history of the development of the [fol. 202] coast.

Q. The only part of that, I take it, that would be pertinent to the theory of the economics, if he had any at that time, would be with respect to the community property rights in California, Oregon and Washington, would it?

A. As I say, I don't remember whether that was specifically discussed or not. I am familiar with it now, but at the time I don't know if that was discussed or not.

The Court: That is all.

(Witness excused.)

Mr. Gallagher: Mrs. Kurtzman.

Mrs. Selma Kurtzman, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Will you state your name, please?
The Witness: Mrs. Selma Kurtzman, K-u-r-t-z-m-a-n.

By Mr. Gallagher:

Q. Mrs. Kurtzman, will you kindly tell us your occupation?

A. Housewife.

Q. How?

A. Housewife.

Q. Do you have any other occupation?

A. Well, I assist my husband. He is a dentist.

[fol. 203] Q. Do you know the petitioner, Mr. Wixman?

A. Yes.

Q. How long have you known him?

A. Oh, for approximately eight years.

Q. Do you know him in the neighborhood where he lives?

A. Yes, I live across the street from Mr. Wixman.

Q. How long have you lived there?

A. Eight years.

Q. Has he lived during those eight years at the same address?

A. Have I, or Mr. Wixman?

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Q. As long as you have known him he has lived at the same address, and you have lived at the same address, not that you were living in the same home, but I mean you were living at the same places you are now?

A. Yes, sir.

Q. Did you ever attend the Junior College, the City College?

A. Yes, I did.

Q. In what years?

A. From September, 1943 to June, 1945.

Q. You didn't know Mr. Wixman at the City College then?

A. No, I didn't.

Q. During this period that you have known Mr. Wixman, [fol. 204] how often have you had occasion to talk to him?

A. Oh, many times; when, you know, I would see him on the street, and just living so close to one another, you are bound to see him often.

Q. Do you know his family, too?

A. Oh, surely.

Q. Have you ever heard Mr. Wixman make any statement in your presence which led you to suspect that he might not be attached to the principles of the Constitution of the United States?

A. No, I did not.

Q. Or that he might not be well disposed to the good order and happiness of the United States?

A. No.

Q. Do you believe that if he were made a citizen, he would be a good and loyal citizen?

A. Yes, I do.

Q. Do you know Mr. Wixman's son?

A. Yes.

Q. Has Mr. Wixman's son ever indicated to you that he held communistic or socialistic views?

A. Oh, no.

Mr. Gallagher: That is all.

[fol. 205] Cross-examination.

By Mr. Burns:

Q. Mrs. Kurtzman, have you ever discussed economics with Mr. Wixman?

A. No, I don't believe I have.

Q. Have you ever discussed the Constitution of the United States?

A. No.

Q. Have you ever discussed the Capitalistic system of government?

A. No, I haven't.

Q. Have you ever discussed the Russian government?

A. No.

Q. Have you ever discussed anything of the same general nature, political or economical, as these subjects I have mentioned?

A. No.

Mr. Burns: That is all.

Redirect examination.

By Mr. Gallagher:

Q. One further question: He never attempted to propagandize you, to make you adopt any political thinking than that which you might have had?

A. No.

Q. He never asked you to go to a Workers School, a [fol. 206] Marxist School, or anything of the kind?

A. No.

Mr. Burns: That is all.

(Witness excused.)

Mr. Gallagher: If the court please, we do have a couple of judges and some others, who will come in. They are not here now, and if there is no objection we are prepared to take Mr. Wixman next, if the court please.

Mr. Burns: Yes.

The Court: If you are going to examine any of the witnesses on matters that will be developed by the government, I think you ought to present them now so that the government will have an opportunity to examine the petitioner on them.

Mr. Ganahl: The testimony will be along the same lines as that given, your Honor.

The Court: That is all right.

Mr. Gallagher: We have John Doyle, Dr. Theodore Blau, Mr. Harry Braverman, Albert Wager, S. Girard Wager,

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Meyer Krakowsky, Judge Stanley Mosk, Judge Rosenthal, and Mr. Bazley.

I think, if it is agreeable, we can stipulate that these other witnesses if called,—may I indicate who they are?

The Court: Yes, sir.

Mr. Gallagher:—Mr. John Doyle, principal of a local school, who has known the petitioner since 1932, and who [fol. 207] was a co-member of the teachers' organizations in 1932, and who is a co-member of the teachers' organizations.

Dr. Theodore Blau, who is instructor of psychology and philosophy at the Los Angeles City College, who is a commissioned officer in the United States Armed Forces, and who has known Mr. Wixman since 1935.

Mr. Harry Braverman, a local businessman, former member of a Grand Jury, a friend of the family, and who has known Mr. Wixman since 1936.

Mr. Albert Wager, who is in the insurance business at the present time, commander of the Jewish War Veterans' Hollywood Post No. 113, and also a member of the American Legion, and second vice-president of the Beverly Hills Lodge of B'Nai B'Rith, who has known Mr. Wixman for five years.

S. Girard Wager, a brother of Albert Wager; he is an attorney and past commander of the Jewish War Veterans' Hollywood Post; past commander of the Department of California Jewish War Veterans; an American Legionnaire; and who has known Mr. Wixman for five years.

Meyer Krakowsky, instructor of foreign languages at the Los Angeles City College, and a member with Mr. Wixman in one of their teacher organizations; a member of B'Nai B'Rith with Mr. Wixman, and who has known him since 1934.

Judge Stanley Mosk, Superior Court judge, president of the Beverly Hills Lodge of B'Nai B'Rith, and a friend of the [fol. 208] family since 1934.

Mr. Bazley, technician and a neighbor, who has known Mr. Wixman since 1935.

Judge Ben Rosenthal of the Municipal Court, who has known Mr. Wixman sine 1934.

Then I wish also to call Mrs. Wixman, but I thought I would do that after Mr. Wixman had testified.

Mr. Burns: There is no objection.

Mr. Gallagher: Now, I would like to propose by way of stipulation that if these witnesses were called they would testify that they had known Mr. Wixman as I have indicated, and that during all the period they have known him they have never heard him to make any statement that led them to suspect that he was not attached to the principles of the Constitution of the United States or was not well disposed to the good order and happiness of the United States and that, in their opinion, if he were given citizenship that he would be a good and loyal American citizen.

Mr. Burns: I am willing to stipulate that their testimony, if called, would be the same as that of the other witnesses, that is, negatively, that they did not hear him make any such statements, such as to lead them to suspect his loyalty and attachment to the Constitution, and so forth; and for the matter of that, we are willing to stipulate that they would recommend him as a citizen.

[fol. 209] The Court: Is it contended that Judge Mosk was one of his students at City College?

Mr. Gallagher: Yes, Judge.

The Court: He was?

Mr. Gallagher: He was contacted this morning, I believe. Wasn't he?

The Court: You did not hear my question.

Mr. Ganahl: He was not a student.

Mr. Gallagher: I am sorry. I did not understand your Honor.

The Court: You stated that Judge Mosk had known him since 1934?

Mr. Ganahl: That is right.

The Court: But it is not contended that he was a student?

Mr. Ganahl: No, not a student.

Mr. Gallagher: Now, your Honor, the way the proceedings have generally been held where I have been present is that the government calls the petitioner and asks him various questions, and then we examine him.

Mr. Burns: Either way is satisfactory to me, whether you question him first or I do.

The Court: Of course, the burden of proof is on the petitioner.

Mr. Gallagher: Then suppose I call him.

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[fol. 210] SHULIM WIXMAN, the petitioner herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Will you state your name, please?
The Witness: Samuel Wixman.

By Mr. Ganahl:

Q. Mr. Wixman, where were you born?
A. In the Ukraine, at that time part of Old Russia.
Q. When did you first come to this country?
A. In 1911.
Q. Did you come with your father and mother?
A. I came with my mother.
Q. You came with your mother. Was your father already here, or had your father not come?
A. He was already deceased.
Q. He was already here?
A. No, he was already deceased, dead.
Q. Oh, pardon me. You came with your mother. Where did you first live when you came to the United States?
A. In New Haven, Connecticut.
Q. How old were you?
A. About eleven.
Q. Eleven years old. Do you know whether your mother [fol. 211] ever became a citizen of the United States?
A. To my knowledge, not.
Q. Did you go to school in New Haven?
A. Yes, I did.
Q. In the public schools there?
A. Public schools, high school, and university, Yale.
Q. You entered Yale at New Haven?
A. Yes.
Q. In what year did you enter Yale?
A. 1917.
Q. 1917. While you were at Yale, how old were you? When you entered Yale how old were you?
A. Seventeen.
Q. While you were at Yale did the first World War break out during that period?
A. Yes.
Q. Did you join the Army of the United States at the time you were at Yale?

A. Yes, I volunteered.

Q. When did you graduate from Yale?

A. In 1923.

Q. In 1923. While you were in the Army of the United States, tell the court about the time when you thought you had become a citizen of the United States, and what happened?

A. To my knowledge, we were told that we would have [fol. 212] to file a paper which would give us citizenship. I took that step. I visited the court, I believe, or the clerk, and was given a form to fill out, which I did.

Q. All right.

A. And I recall being called in with a number of others into the courtyard, or the campus where we were stationed, and being sworn in. Those were my recollections, and from then on I considered myself a citizen and acted as such all these years.

Q. You received an honorable discharge from the Army of the United States, did you?

A. Yes.

Q. Then after finishing your course at Yale, graduating there, I think you said, when you were twenty-three?

A. Yes.

Q. What did you do then?

A. I came west to the University of California to take graduate work.

Q. Did you take graduate work at the University of California?

A. Yes, I did, at Berkeley.

Q. Did you get a degree from there?

A. No, I did not take a degree. I had not finished, had not completed my work for the Ph.D.

Q. You were working for a Ph.D.?

[fol. 213] A. Yes, but I had not completed it.

Q. You already had an M.A.?

A. No, a Ph.B. from Yale University. They granted a Ph.B. to those who selected modern languages in preference to classical languages.

Q. Now, after you graduated from the university, or after you finished your work at the University of California, what did you do then?

A. I had not finished the work. I became a candidate for the degree when I would complete the work, but I proceeded to teach. In fact, I taught on the University of

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California campus while taking graduate work. I taught in the department—I was an assistant in the Department of History.

Q. After you got through with your teaching there, what did you do?

A. I was connected with religious work. I was in charge of Temple House activities in San Francisco. Then in 1929 I was invited to come to the Junior College to teach, and remained there at Junior College, which became the City College, until 1941.

Q. During the period from the time you reached your majority, did you register and vote as a citizen?

A. I recall registering in 1928, in the campaign of 1928; not prior to that.

[fol. 214] Q. Did you vote subsequent to that time?

A. Yes, beginning, I believe, in the election of 1932.

Q. When did you first find out that you were not actually a citizen of the United States?

A. In the winter of 1940.

Q. What was the occasion that brought that to your attention at that time?

A. I recall the family listening to a broadcast, I believe, by the Naturalization Department, to the effect that all naturalized citizens should be certain to have their certification of citizenship with them. I didn't recall having any such certification. So I communicated with the State Immigration and Housing Department with Mr. Carey McWilliams, who was chief, and who had his office then write to the national office, I believe, in Washington, and after some research the answer came back that the national office had a record of myself having filed a declaration of intention, but, according to their records, I hadn't followed up that declaration.

Q. And that so far as they knew, you were not a citizen?

A. So far as they knew.

Q. From that time up until the present you did not attempt to exercise your franchise as a citizen, did you?

A. No, as soon as I discovered there was any doubt as [fol. 215] to citizenship, I voluntarily went over to the local office and canceled my voting privilege until my citizenship was cleared up.

Q. Then what did you do in relation to your citizenship, that is, in relation to obtaining your citizenship? What did you do?

A. I refiled for clearance of citizenship, on the basis of being married to a native-born citizen.

Q. Now, prior to that time you had been married to your wife, Mrs. Wixman?

A. Yes, for some time.

Q. And she was a citizen of the United States?

A. Yes.

Q. Was that the first application?

A. No, I filed a petition for citizenship; the second papers, in other words. I did not have to file the first, on the basis of marriage to a native-born citizen.

Q. All right. Then you dismissed the application for citizenship somewhere along the line, though, didn't you?

A. Yes.

Q. And you then refiled again?

A. With the stipulation to refile soon afterwards, immediately afterwards, which I did.

Q. In other words, you dismissed without prejudice, with the right to refile?

[fol. 216] A. That is right.

Q. Then you did refile?

A. That is right.

Q. And that is the proceeding now before the court here?

A. That's right.

Q. All right. Now, when did you teach at City College?

A. From 1929 to—officially, until 1941.

Q. Until 1941. During that period what were you teaching there?

A. I should qualify that. I taught until 1940. There was a period of about nine months when I was on the pay roll, but not teaching.

Q. During that period what were you teaching there at City College?

A. Courses in economics and history.

Q. Now, in these courses of economics and history, did you ever at any time teach your boys and girls the doctrines of Communism in any way that would lead them to believe or get the idea that you favored Communism as a system of government over the present system of government we have in this country?

A. No.

Q. How did you conduct your classes, by way of lectures?

A. Lectures and discussions. The classes were always [fol. 217] conducted on a very informal basis.

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Q. Just tell his Honor how you did do it. Would you discuss with these boys and girls Communism, and Fascism, and the various things that were going on about the world during that period?

A. We discussed all economic systems, the past and current, always on a comparative basis; never to my recollection with any preference for any one of those. We took up the principles of each system.

Q. In the economics course or in the history course was there recommended readings given by you as a teacher out there?

A. Yes. The system of readings was that each week at the beginning of the week each class was given a set of readings for that week, which set of readings consisted—the set of readings was written on the blackboard and remained there for a few days, and the readings consisted of two types, required reading, which was always anywhere from one to three or four standard textbooks, and then a list of reference readings consisting of anywhere from five to perhaps twenty books covering the subject for the week. There was never any indication of preference for the student, that is, a faculty preference so far as the reference readings were concerned. All the students had to read were the required readings, and then the student was to select at [fol. 218] least one of the reference readings for himself.

Q. Now, the reference books which you gave to your students to read, were they all in the library out there at the City College?

A. The readings were always given on the basis of books we had in our library because we felt it would be inconvenient for students to have to go elsewhere to read.

Q. During the conduct of these various courses you had one of the professors at the college who was your immediate superior, did you not?

A. Yes, the chairman of the department.

Q. And the chairman of the department and yourself and the other instructors would discuss generally the subject-matter and the things that you were doing at the college?

A. Yes. Of course, we did not meet too frequently, but when we did meet, we discussed that.

Q. The head of your department knew and was aware of what you were teaching in your courses, was he?

A. I presume so.

Q. You say, "I presume so." What do you mean by that?

A. I definitely think yes, he knew what we were teaching in classes.

Q. Did you discuss with him what you were teaching in class?

A. Not on an individual basis, so far as I recall; in general [fol. 219] discussions in departmental meetings.

Q. He knew the books, in a general way at least, what the books were and the style of books, the type of books that were being recommended by you to the students to read; is that correct?

A. In the sense that each instructor was required to have at least one textbook, and then the others, of course, were selective. The rule was at the school that each student had to have at least one text book.

Q. During any of the period of your teaching at City College, were you ever called in before the head of the school or before the head of your department and told students were making complaints that you were teaching Communism?

A. No, I do not recall any such.

Q. If it had happened, you would know it, wouldn't you?

A. Oh, yes, I would.

Q. Now, Mr. Wixman, you were also the sponsor of an off-campus club, were you?

A. No, not off-campus; on-campus.

Q. But extra-curricular?

A. I should qualify that. I was official faculty adviser of the Hillel Council, which was, in other words, for the Jewish students. I was official sponsor for that. That club met in Newman Hall, which is across from the campus, [fol. 220] and which is the religious building, the university religious building.

Q. During your sponsorship of any of these clubs, had you ever at any time solicited or told or advised the members of these clubs to attend a school, a workers' school.

A. No.

Q. You gave many talks and lectures off the campus at other places, did you not?

A. I did.

Q. At any of these lectures, or at any time, did you ever advocate as a way of life or as something that should be

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performed or done by others the so-called Marxist philosophy?

A. No.

Q. Did you ever tell any club of teachers, or otherwise, that you intended to teach and would teach the so-called Marxist philosophy?

A. No.

Q. Were you then, or are you now, a member of the Communist party?

A. No.

Q. Were you then or are you now an advocate of the philosophy known and commonly called Communism?

A. No.

Q. Or have you ever been at any time a member of the Communist party?

[fol. 221] A. No.

Q. Or have you at any time ever advocated that system of philosophy which we term and know as Communism?

A. No.

Q. Have you at any time ever advocated or taught that the collectivist system of society was that system of society which should be embraced by us here in the United States?

A. No.

Q. Or that it was better than the so-called individualist *solicity*?

A. No, not in that sense. As I said before, only on a comparative basis, but not certainly advocating that this country should have it.

Q. In other words, you felt free to discuss these things at all times, but you never advocated them or taught them or urged them to any group to become a part of our life here?

A. Yes. Excuse me. On that question I answered yes. I think from the way it was formed it was a wrong question.

Q. Were you at any time ever enrolled in a Communist school?

A. No.

Q. Did you ever have a group of students at your home, I believe it was during 1939, or any time, where you got together and sang the Internationale?

[fol. 222] A. No.

Q. Do you remember the occasion that Mr. Horton has testified to, when he said he heard the Internationale being

sung at your house? Do you remember such an occasion at any time?

A. No.

Q. Do you remember this Hindu that Mr. Horton testified to, that you introduced to the assembly at the City College—what was his name again—Mr. Petal?

A. I recall Mr. Petal, but I have never introduced him to an assembly at the City College?

Q. How well did you know Mr. Petal?

A. Just very casually. For only a few days, I believe.

Q. Were you the one that invited him to come to the City College?

A. No.

Q. You had nothing to do with that?

A. No.

Q. Now, since you left City College, what have you been doing?

A. I had been connected with the Community—Jewish Community Centers in this city and Portland for a short period and worked as a field representative, making surveys and studies on a nation-wide basis for the B'nai B'rith youth, the Hillel Foundation, and the Youth Foundation [fol. 223] and their Vocational Service Department, until the present job which I hold now.

Q. In this connection, and in your connection with the B'nai B'rith and the Hillel Foundation, what did you have to do?

A. Primarily to make studies throughout the nation of enrollment of Jewish students in the various universities and colleges, the more or less attitude of administration towards the Jewish students; also, to cultivate the ground of public relations for potential enrollment of Jewish students in various training schools.

Q. And that is what you are doing today?

A. Today we are concentrating on southern California. My position right now is executive director of Jewish Economic Problems, renamed recently Jewish Personnel Relations Bureau, the bureau being a department of the Los Angeles Jewish Community Council, and it is primarily, the work primarily again is public relations in the various fields of industry, business and professions, with the idea

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of preparing the ground for potential Jewish applicants for jobs in business, industry or the professions.

Mr. Ganahl: You may take the witness.

Cross-examination.

By Mr. Burns:

Q. Mr. Wixman, during what period were you in the [fol. 224] Army of the United States?

A. During 1918, during the war, the first World War.

Q. For about how long were you in?

A. For several months.

Q. And where was your service?

A. In New Haven, Connecticut. We were stationed,—a part of the Army was stationed on the Yale University campus.

Q. Were you on the campus during all the time you were in the Army?

A. That is right.

Q. It was there then that you were called to this assembly, as you say, where somebody gave you the idea that you were a citizen of the United States?

A. Yes, sir.

Q. Do you remember who it was that made the remark to you that made you think you were a citizen?

A. I don't recall who it was.

Q. Do you remember what he said?

A. All I recollect is that a number of us were sworn in, I thought as citizens of the United States.

Q. Was it one of the officers who swore you in?

A. It might have been, but I am not sure. I don't recall who it was.

Q. Did anybody there, the man who swore you in or any-[fol. 225] body else, tell you you were being sworn in as a citizen of the United States?

A. To my recollection, yes.

Q. But you don't remember who it was that told you that?

A. No.

Q. Had you prior to that time made an application or a declaration of intention?

A. Yes, but I didn't know it was a declaration of intention. I was told to file a paper for citizenship, which I did at the time.

Q. Was that at the time you took this oath, or before, or after?

A. It was prior to that. Possibly a week or two prior to that.

Q. Were you in the Army at the time you made this declaration?

A. Yes, when I filed the declaration I was already in uniform, as I recall.

Q. You came to Los Angeles City College from Berkeley in about 1929?

A. In 1929.

Q. That was the time that this school was started, was it not?

A. That is right.

[fol. 226] Q. And you were assigned to teach history and economics courses, I believe?

A. That is correct.

Q. In the social science faculty division?

A. That is right.

Q. And you continued to teach in the school until about 1940?

A. Correct.

Q. You taught nothing but history and economics during those years?

A. Well, for one semester, in addition to the fields of economics and history, I also taught German.

Q. Just for one semester?

A. That is right.

Q. Referring to your economics courses, did you ever have any complaint from any of the students as to the matters you were teaching there?

A. I do not recall any such complaints.

Q. Did any student ever come to you and question the matters you were teaching, with that in view,—I mean, in that respect, saying that they were radical, or anything of that sort?

A. I do not recall any student doing that.

Q. Did you ever hear of any student making that complaint to anyone else?

[fol. 227] A. No, I haven't heard of that. Now, mind you —excuse me—we gave freedom to students in the classroom to naturally give their views all the time, but it was on a give-and-take basis and always with the idea of freedom of discussion.

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Q. I understand. Did any of your superiors in the school there, Professor Cruse, or anybody else, ever discuss the matters you were discussing in your classes?

A. I do not recall any individual.

Q. With respect to whether or not you were advocating radical or communistic or Marxist or individualistic systems of government?

A. I do not recall at any time Mr. Cruse doing that.

Q. Did any of the faculty members or other members of the faculty do that?

A. I do not recall any.

Q. In the course of your economic course or courses, you did discuss Marxism and Communism, did you not?

A. Only in conjunction with all the other systems, with capitalism or Naziism, socialism, all of those. Never alone.

Q. Do you think it was the proper function of a teacher, teaching in a class with such a provocative subject as economics—do you think the teacher should express his views or merely state neutrally what the views of other people were?

[fol. 228] A. As I view it, it is the duty of the teacher to express objectively and scientifically all sides of problems, all trends.

Q. Without expressing his own opinions in the matter?

A. Without expressing his own opinions of the matter in the class room.

Q. How about outside the classroom, that is, to the students away from the class?

A. I do not recall any occasion where a student outside of the class room would ask for it. I do not know how I would have reacted had a student approached me on that basis.

Q. I haven't made myself clear. I have in mind as to how a university teacher should act in such a situation.

A. The teacher is a private citizen outside of the classroom.

Q. Of course. What are your views with regard to the most desirable form of government, that is, that which will foster the best economic situation for the people with regard to, let us say, the institution of private property or capitalism?

A. I judge economic systems on the basis of what type of standard of living it can provide for the vast majority of people under that system. If it can provide a good

standard of living, then it is a good economic system. I [fol. 229] think the end of an economic system is just that. That is, my opinion is to provide a good standard of living for the vast majority of the people for those at least who are willing to work, to produce and contribute toward the maintenance of this.

Q. It is then the greatest good for the greatest number?

A. Correct.

Q. In the course of your studies in economics and history, did you come to any conclusion in your own mind as to which of the existing forms of government best fosters that greatest good?

A. To my view, after study I feel the system we have in the United States is no doubt the best system we have in the world at the present time, and that it still can be improved upon. But right now it is, and has been for some time, the best system in the world.

Q. Would you designate as capitalistic the system that prevails in the United States today?

A. Capitalistic, with a considerable amount of modification.

Q. What would the main modifications be?

A. The modification to the extent that we do have a considerable amount of socialization of some of our agencies.

Q. Such things as social security?

A. Social security, education, post office, and so forth.

[fol. 230] Q. Do you believe that these things, such as the free education system in the United States, and social security, and even the post office system are things which are working to the ultimate betterment of the people, that they are things which are good and should be retained?

A. Definitely so.

Q. And not just stop-gaps to delay the coming of a better era or better system of government altogether?

A. No, they are definite agencies for that.

Q. Now, during the time that you were teaching at the Los Angeles City College, then the Junior College, for at least a part of the time you recommended readings, as you have testified to your own counsel, from time to time for the students; is that correct?

A. Correct.

Q. The books which you recommended were books which you selected yourself; is that correct?

A. Yes.

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Q. They were from no faculty list of books?

A. No, selected myself upon the basis of what we had in our school library.

Q. Do you recall recommending the reading of "Das Kapital" by Carl Marx? Was that ever one of the books put on your reference book list?

[fol. 231] A. That was one on a long list of books. I recall that series of readings including that, but it also included "Wealth of Nations" by Adam Smith, and the——

Q. But "Das Kapital" was among the list of books up there for reference reading?

A. Yes, I recall that.

Q. Do you recall putting up any books by Lenin for reference reading?

A. That I do not recall.

Q. Do you recall any books by Beatrice and Sidney Webb?

A. Yes, I recall that.

Q. Do you recall a book, "The Simple Case for Socialism"?

A. Yes, in conjunction with other books on other isms.

Q. Did you ever recommend for reading to your students a book by Joseph Stalin?

A. I do not recall that. However, I do recall listing "Mein Kampf" along with other readings. When we were discussing the economics of Fascism, there were readings against Fascism and for Fascism, and this was just another source book for the students to read, if they wished to. They were not told they must read it. That was a long list, and for them to select some reading out of that list.

Q. I have here a lecture which, according to the notes [fol. 232] in my file, you yourself submitted to the Immigration and Naturalization Service, Mr. Wixman.

A. I did, at their request.

Q. I will ask you to look at it and tell me whether that is the lecture that you submitted to us as an example of the matters that you taught.

A. I did. Of course, generally it is.

Q. Some of the typewritten pages of that book or that pamphlet have been corrected in ink, usually rather minor corrections. Are those the corrections you made in that?

A. Some of the corrections I recognize as mine.

Q. Do you recognize any that weren't yours?

A. No.

Q. That is the lecture that you gave to Mr. Tellner of the Immigration and Naturalization Service shortly after filing your first petition, is it not?

A. That is a copy.

Q. That is the actual document you gave him?

A. Yes, minus the covers, and so forth.

The Court: What do you mean by "and so forth"?

The Witness: Well, pardon me. This outside cover was not mine, not as I gave it.

By Mr. Burns:

Q. You mean this is the document, except that the cover has been added?

A. I guess yes, that's right.

[fol. 233] Q. There is a top sheet here with the words "Economic Trends." Is that your writing?

A. That is my writing.

Q. That was probably the cover at the time you submitted it?

A. That is right.

Mr. Ganahl: Will you let us have a look at that, please?

Mr. Burns: Certainly.

(The document referred to was handed to counsel.)

By Mr. Burns:

Q. Did you ever give that lecture?

A. Yes, I recall giving that lecture.

Q. Do you recall how many times you gave it?

A. So far as I recall, once. It was one——

Q. Do you remember the occasion on which you gave it, then?

A. Yes, it was one of a series of faculty lectures given outside of school hours on the campus to the faculty and students and outsiders, if they wished to come.

Q. It was an open public lecture run at the school?

A. That is correct.

Q. For other faculty members and students and anybody else who cared to listen?

A. Correct.

Q. Do you remember in what year it was given?

[fol. 234] A. I am not too certain. It may have been in 1934 or 1935, but I am not too certain.

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Q. In that period?
A. In that period, yes.

Mr. Ganahl: Your Honor please, upon that basis—I haven't looked through this so as to be able to state whether there is any other objection, but I am going to object as incompetent, irrelevant and immaterial, because it is more than five years ago.

Mr. Burns: I think it is indicative of the man's feeling, your Honor, in regard to these things, and although the lecture was written more than five years ago and delivered more than five years ago, so far as we know, I think it is still admissible evidence in this case to show the attachment of Mr. Wixman, which is the thing in question here which may be gone into. We can't limit ourselves to matters that he has said within the last five years. He has been constantly moving around in most of the last five years in his present position.

Mr. Ganahl: If I may be heard, your Honor, I can't see that is an element of the government's proof in relation to Mr. Wixman's feelings. I think what he did, especially within the last five years, is the thing that is indicative of what the man feels now. I don't know if there is anything in this pamphlet that is particularly harmful to our cause, [fol. 235] but I think that we should be confined to what has been done within the last five years. It took St. Augustine thirty-four years before he was converted, and what a man's views were in 1934, or even his thoughts, should not be the controlling thing here, because we are limited to the last five years.

The Court: Objection overruled.

Mr. Burns: I am going to read a portion of this lecture, Mr. Ganahl.

The Court: It should first be marked in evidence, of course.

Mr. Burns: Yes. I will offer it, to be marked in evidence.

The Court: Received.

Mr. Ganahl: I didn't hear your Honor.

The Court: The lecture is received in evidence.

The Clerk: Government's Exhibit 1.

(The document referred to was marked Government Exhibit 1, and was received in evidence.)

The Court: When did you present this material to the Immigration and Naturalization Service?

The Witness: Your Honor, soon after filing the petition for naturalization, oh, possibly early in 1942. I filed in August of 1941, and the Examiner asked for a copy possibly early in 1942, as I recollect.

[fol. 236] Mr. Burns: I have a notation in the file of the exact date, if you would like it, your Honor.

The Court: All right.

Mr. Burns: It was the day following this notation, which was made on March 24, 1942, so it was the 25th day of March, 1942, that he submitted it to Mr. Tellner, the first petition having been filed on December 18, 1941.

By Mr. Burns:

Q. After a poem by President Lincoln to the effect that he was behind his own face and not jarred by it, this lecture goes on to say:

> "If I am permitted to paraphrase Lincoln's answer, I would say that, if some ideas I shall bring out are somewhat unconventional, unorthodox by far, I, too, do not mind them, for I am squarely behind them."

Do you remember that as being a part of the lecture?

A. Yes, I recall that. It was particularly, Mr. Burns, in reference to the following paragraph, bearing on my loyalty to the country and to the Constitution.

Q. You have a copy of the lecture there, do you not, Mr. Wixman, of the same thing?

A. Yes. I would consider it a favor if you would read the following paragraph.

Q. Well, Mr. Wixman, the following paragraph can be put in evidence by yourself or by your attorneys.

[fol. 237] Mr. Ganahl: The whole pamphlet is in evidence, as I understand it.

Mr. Burns: I am not going to read it into the record. The whole thing is in evidence.

Mr. Ganahl: I think, your Honor, it is certainly unfair to pick out a sentence and ask him about it. The witness says it is in reference to the next paragraph.

Mr. Burns: I have no objection to reading the next paragraph.

The Court: Read it.

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Mr. Burns: "There seems to prevail a mistaken notion that anyone who entertains and expresses—no matter how softly—any thoughts and principles other than those in support of the existing order, is ipso facto unpatriotic. From the outset may I say that the speaker yields to no one in the matter of loyalty to and love for this country, these United States of America. However, the country I have in mind may perhaps be to a degree different from that to which some have been accustomed. The land I have in mind is one which beckoned to me some years ago as the land of opportunity for all, a land of plenty, one, the resources of which were sufficient to wipe out needs, hardships, and poverty for all honestly willing to work; a land in which co-opera-[fol. 238] tion and social-mindedness could create all necessities and comforts for all. On the other hand, if disloyal, I am so only to a land in which want stalks in the homes and streets of cities and towns, in villages, on farms, on the highways and by-ways. I suffer but little love for a land that sets up upon a pedestal and accords a place of honor to those who are ever ready to brand everyone else an enemy of the country, while themselves fail to show much faith in the Bill of Rights, in the Constitution, or even in some of the fundamental laws of humanity, decency and fairness."

That is the paragraph.

By Mr. Burns:

Q. On page 3, Mr. Wixman, of this lecture, in the middle paragraph, there is some reference to the situation with regard to school teachers and education generally, and a criticism implied at least by you, that the program outlined in those four points did not offer equal education for all. The lecture goes on from there then:

> "Of course, there are many who say that these are not normal times, that we are in a depression now. That Capitalism is all right, that we better give it a chance to get on its feet again, that even now it is already on the way to recovery; in fact, that prosperity is just around the corner. Let us not be fooled again. [fol. 239] Personally I am somewhat impatient with such contentions."

Is that correct? That is what it said?

A. With the words that prosperity is right around the corner, yes.

Mr. Ganahl: Your Honor, I think the whole lecture will speak for itself. There is the language.

The Court: That is true, but, of course, the government has a right to query the author of the lecture.

Mr. Ganahl: That is true, but the government is certainly not sitting here in the sense of a censor. Here is a lecture given when?

Mr. Burns: In 1935.

Mr. Ganahl: In 1935, and your Honor will take judicial notice of the fact that there was a depression and the things said there were said by some of our higher, leading Democrats and others in this State and throughout the nation.

The Court: Most of them were citizens, I think.

Mr. Ganahl: Sir?

The Court: Most of them were citizens of the United States.

Mr. Ganahl: At that time he thought he was a citizen of this country. He never discovered the fact that he was not a citizen until the emergency brought that forth.

The Court: I heard him say that, but he was not a citi-
[fol. 240] zen.

Mr. Ganahl: That is correct, but even if he was not a citizen there wouldn't have been anything that would have precluded him from making that statement.

The Court: I am not going to argue that with you, but I am giving you the court's view.

Mr. Ganahl: Yes, your Honor.

By Mr. Burns:

Q. That was a part of the lecture?

A. I would appreciate it if you would read the next sentence at the top of page 4, which is a part of it.

Q. All right:

> "In fact, I agree heartily with President Roosevelt who remarked, 'The overwhelming majority of our population has little patience with the small minority which vociferates today that prosperity has returned, that wages are good, that crop prices are high and that government should take a holiday.' "

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You did agree with that statement of President Roosevelt?

A. Yes. I felt as impatient as President Roosevelt with the contention that prosperity was already here.

Q. Do you now wish the court to understand that you meant by what I read just before that you were impatient with such contentions, the contention being that Capitalism is already here, that we had better give it a chance to get on [fol. 241] its feet again, that even now it is already on the way to recovery?

A. In 1935. I would not say presently; say the same presently.

Q. Do you wish us to understand now the things you were impatient with and the things mentioned in the impatience of President Roosevelt are the same thing?

A. Presently?

Mr. Ganahl: Just a moment. I am going to object to that as entirely incompetent, irrelevant and immaterial, and calling for the conclusion of this witness, as to what he might have been impatient with, in the form and manner in which that question was put.

Mr. Burns: I think he can testify as to what he meant by that statement.

The Court: One at a time, gentlemen. We don't want any open forum here with everybody talking at once.

Have you finished your argument and objections, Mr. Ganahl?

Mr. Ganahl: Yes.

The Court: The objection is overruled.

By Mr. Burns:

Q. Going on, immediately following what we have just read on page 4, the statement is:

> "Even if we assume that a capitalist revival could be stimulated and affected by inflation and deflation [fol. 242] schemes, by public construction schemes, or by what-have-you schemes, it would still have in it the inescapable capitalist tendency to generate a renewed depression."

Do you remember giving that portion of the lecture?

A. Yes.

Q. Was that an expression of yours at that time?

A. Yes, at that time, on the basis——

Q. Does it express your opinion?

A. On the basis of conditions at that time. At the present time I could say with modification, that it can be changed, that it can be revived; that it has been shown it could be revived during the war period.

Q. Is it your belief that this is a permanent revival of Capitalism?

A. I could not look into the future.

Q. Do you think that Capitalism still has within it the seeds of its own death?

Mr. Ganahl: Now, if your Honor please, I submit that that is entirely incompetent, irrelevant and immaterial. That is a quotation from Aristotle which says, "Every organized institution has within itself the seeds of its own destruction."

The Court: That question is a little bit——

Mr. Burns: I will withdraw it, your Honor.

[fol. 243] By Mr. Burns:

Q. In the paragraph next below that you say:

> "In consequence, if the strongest card of the defenders of Capitalism has always been that, despite all of its undenied imperfections and injustices, it does somehow on the whole contrive to 'deliver the goods,' so to speak, then surely it stands condemned and convicted by the arguments of its own apologists. For that is just what today Capitalism is most obviously failing to do."

Was that a part of the lecture as given?

A. As given.

Mr. Ganahl: I object to that as incompetent, upon this ground, if your Honor please: how does it affect this man's right to become a citizen, even assuming he held this view, that Capitalism is on its hind legs and going to fall, and so forth. Where would that affect this man's loyalty to this country? He could certainly advocate such an idea and be a perfectly good, loyal citizen of the United States. I just don't see the government's implication of why it should be asked, and I think it is incompetent for that reason. It does not tend to show any disloyalty in any way.

The Court: Of course, he was not a citizen of the United States.

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Mr. Ganahl: But even assuming that he was not, the [fol. 244] Constitution guarantees to any person the right to say those things. Of course, again calling your Honor's attention to this, I don't think there is any dispute about it, here is a boy that came over to this country when he was eleven years old, and who thought he was a citizen.

The Court: I am going to let you argue the case to the fullest extent at the proper time, but I don't think you should argue it during the examination.

Mr. Ganahl: I don't want to. I can't see the competency of the question.

The Court: I am sorry, but I see it. Overruled.

By Mr. Burns:

Q. That statement I just read is a part of the lecture as it was given, is it not?

A. Yes, in reference to 1935.

Q. Yes. In the middle of the middle paragraph on page 5, you say:

> "But today a growing skepticism has put economic faith in Providence at a discount."

Do you find that?

A. On page 5?

Q. Yes, just below the middle of the middle paragraph.

A. Yes.

Q. "But today a growing skepticism has put economic faith in Providence at a discount. As a result, for some [fol. 245] years past one has been hearing of a strange new economic doctrine—a capitalist planned economic system."

Then going to the head of the next paragraph, because I do not think the other sentence is material——

A. May I suggest that what you have just read refers directly to the top of that paragraph also, and with your Honor's permission I suggest that the whole thing should be read rather than that alone.

Q. I am introducing the whole lecture in evidence. I merely wish to question you about a portion of it.

A. But I feel it should be read to explain——

The Court: Read the portion that you think is explanatory of the portion the examiner asks you about.

The Witness: Thank you, your Honor.

"This picture as painted,"—in other words, that is above that.

The Court: Read it. I don't want your statement, but read what you say is in that lecture that is explanatory and that explains what was in your mind at the time you made the statement you are examined on.

The Witness: "This picture as painted, is the direct and inescapable result of the logic of events of capitalism of the 19th Century and before. That capitalism was by its very nature one without a plan. At least not [fol. 246] a conscious plan, for whatever planning there may have been in it, was done by a mysterious power—an 'invisible hand', as Adam Smith called it. Now, it became nothing short of blasphemy to attempt to interfere with the operations of that 'invisible hand,' and as long as it functioned somewhat satisfactorily for some, its workings were not questioned. But today a growing skepticism has put economic faith in Providence at a discount."

In other words, I would like to point out that Adam Smith's theory works up to the 19th Century, or even in the late 18th Century, but we have had changes throughout the world industrially, economically and technically.

By Mr. Burns:

Q. Going on to the next paragraph, Mr. Wixman:

"But capitalist planning is highly paradoxical, because planning involves the elimination of private enterprise and competition in the matter of kinds of goods produced, price to be charged, the share that is to go to the producer, the amount to be set aside for capital accumulation, and so forth. Now, are not the eliminated elements of private enterprise and competition the very props of capitalism, which if knocked from under would carry with them the system itself? [fol. 247] And as long as industries are to be carried on with private profit as the incentive for production, the State will be compelled to guarantee the capitalist's profits if it undertakes to direct its business for him. This in itself will destroy the incentive for efficient production, will tend to disrupt the capitalist system."

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And at the conclusion of that paragraph:

> "State capitalism under those conditions will find itself between the proverbial Scylla and Charybdis, between wrack and ruin. We cannot, consequently, build up much of a case for State capitalism."

Was all that in the lecture as given?

A. That was.

Q. Now, continuing on the next page, which immediately follows that—

A. May I suggest that in the paragraph before the last one we had, we have a quotation rather than my own words. The last few sentences of the middle paragraph are in quotation marks.

Q. Yes. I didn't read the portion that is in quotes.

A. I say, "The advocates of this idea are

> 'those from the capitalist ranks who have become in- [fol. 248] fluenced in part by the great growth of trusts and combines and partly by the example of the Five Year Plans elsewhere. Both, they say, have established an ordered system of production.' "

In other words, those are not my words.

Q. All right. Then going to the top of page 6, which immediately follows the last thing that I read, the statement that not much of a case could be built up for State capitalism, the lecture continues:

> "With State capitalism out of the picture, what then is to take its place? The answer lies in one of two contending, underlying philosophies, which, thrown into the arena of today, are fighting for acceptance."

Is that the way your copy reads?

A. Yes.

Q. "These two under-lying philosophies are, individualism and collectivism, which in their latest form we may designate as Fascism and Socialism respectively."

Is that correct?

A. Yes.

Q. "Interested as we are in today primarily, let us take the newest arrivals into the laboratory and in-

[fol. 249] vestigate the make-up and potentialities and promises of each.

"What is the Fascism? Well, Fascism, whether in brown, black, silver, khaki or gold shirts, is the agent of business in its struggle to retain economic and political power in diseased and dying capitalist states."

A. There is the word "big" there,—"is the agent of big business."

Q. I left that word out. I am sorry. I didn't mean to.

"It is the unconcealed rule of monopoly capitalism."

That was in the lecture as given?

A. As given.

Q. The lecture goes on in the paragraphs immediately following that to criticize Fascism from an economic viewpoint, winding up with the statement:

"Thus the very economic order of present-day society will prevent Fascism from injecting political restoratives into the lower middle class in order to revive its fast dwindling powers."

That is correct, as the lecture was given, is it not?

A. Yes.

Q. Then going over to the beginning of the next paragraph, or, to the first paragraph beginning on page 7:

[fol. 250] "What on the other hand is the antagonist of Fascism? The collectivist state, according to its proponents, in brief, proposes that, 'all resources, all land and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication, should be, not private property, but the common property of all those who work.' It further proposes that society should consist only of those who work, which means that all members of society should be socially useful human beings . . . that production be made to serve the needs of those who work, rather than to serve the needs of a few parasites . . . that production and distribution of goods be planned scientifically to avoid anything resembling the crises of capitalist society, that the society established be intent on developing the machine technique, mass production, and a minute division of labor to the fullest possible extent.'

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"But how is mankind to reach this state of practical idealism? The collectivist believes that it is necessary for society to go through four stages of development in the path from capitalism to socialism.

[fol. 251] "First of all, there must be the stage of bourgeois capitalism, which is capitalized by private property, free enterprise and competition. This state of being, because of its inner defects and contradictions, must give way to another, 'the change to be expedited and effected by the strong, determined, class-conscious part of the working class—all workers or producers, or those laboring by brain or brawn—when a favorable opportunity presents itself."

A. That was all in quotes, was it not?

Q. The quotes are not closed anywhere here. They had been closed after "class-conscious part of the working class" but the quotes have been scratched out by a pen, which I believe is your mark?

A. Yes.

Q. "This achieved, there is to follow the second stage—'the dictatorship of the masses.' That is in quotes "the dictatorship of the masses." "Realizing that since not all the workers are capable in managing government and industry, there must be an intelligent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals."

[fol. 252] The matters in that paragraph were a part of your lecture?

A. Yes.

Q. "The second stage is to give way to the socialist society—the third phase of collectivism. During this, 'all means of production will be in the hands of the democratically governed state. The masses of workers will now be in control. Wages will still be paid on the basis of efficiency or productivity, with some prevailing differences in wages as a result.' Since there was still the considerable centralization of economic and political control, unless all vestiges of class opposition have been eliminated, this third stage is very much akin to state socialism."

Was that a part of the lecture as given?

A. That's right.

Q. "The last and final phase of this societal change will be the collectivist society—the ultimate goal. This time, coercive authority will have disappeared, everyone voluntarily participating in the co-operative commonwealth. This will be the real 'classless' society," —the word "classless" is in quotes—"with no wage [fol. 253] system, no price, no money—a system based upon the principle of 'from each according to his ability, to each according to his need.' Thus, cryptly put, will evolve the state known as Collectivism, a state which according to the prophetic, far-seeing vision of Karl Marx is historically the logical outcome of a system of society that has outlived its usefulness, its mission, its place in history of economic growth of mankind. It is man's ultimate goal. It is the panacea for which he has been thriving for untold ages. It is his El Dorado, his Promised Land—his ideal which he is to reach here on this earth now, and not 'by and by when you die.'"

The Court: I think we will recess now. I would like to take that exhibit over the noon hour and read the lecture. 2:00 o'clock, gentlemen.

(Whereupon, at 12:00 o'clock noon a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 254] Los Angeles, California, Friday, January 31, 1947
2:00 P. M.

SHULIM WIXMAN, the petitioner herein, called as a witness in his own behalf, having been previously sworn, resumed the stand and testified further as follows:

Cross-examination (Continued).

The Court: I will hand this exhibit back to you, Mr. Burns.

Mr. Burns: Thank you.

By Mr. Burns:

Q. I believe, Mr. Wixman, in discussing this lecture "Economic Trends" with you before the court recess,

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before lunch, we had covered most of the lecture down to the point where the four phases of societal changes were discussed, down to, to be specific, page 8, and down to the end of the second paragraph on that page.

I believe that the last portion of the lecture that I read to you was the very end of that paragraph where reference is made to the state known as collectivism, which would evolve, "a state which according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefulness, its mission, its place in history of economic growth of mankind."

That was in the lecture, as you gave it, at this faculty lecture, was it not?

[fol. 255] A. Yes.

Q. As a matter of fact, Mr. Wixman, isn't that statement regarding the four phases of future history, if you might call it that, pure Marxism? Isn't that what Marx predicted in his "Das Kapital"?

A. Before I began those phases, I stated, "According to the proponents of that system," I said those are the stages which would follow.

Q. That is what Marx said?

A. I do not recall.

Q. You have read Marx?

A. Yes, from time to time. I do not recall.

Q. Isn't that the burden of his book? Isn't that what he has predicted as inevitable history?

A. I couldn't tell you whether that is the burden of his book. The book is full of the story, in fact, the evolutionary story of the economic and industrial development throughout the ages.

Q. Do you regard this lecture in particular, Mr. Wixman, as having been neutral, as not arguing one side or the other of this question as to whether we should have a Fascist or a Socialist state?

A. I definitely consider it neutral and objective because I analyzed it all on a comparative basis without necessarily suggesting any one as the system we should have.

[fol. 256] Q. You don't think that the comparisons you made here were to the advantage of Socialism as against Fascism?

A. Possibly so, Socialism as against Fascism, yes, but certainly not against Capitalism, because I consider many phases of Capitalism being Socialism.

Q. Would you point out anywhere in this lecture, as it was given, or as it was written here, either way, that these *were the ideas of somebody else and that it was a neutral* treatment?

A. Yes. I mention that according to the protagonists of this sy-tem those are the stages that you go through. I said, "The collectivist believes that it is necessary for society to go through four stages of development in the path from Capitalism to Socialism."

Q. I again call your attention to a portion of the lecture which I have already read to you, beginning at the top of page 6:

> "With state capitalism out of the picture, what then is to take its place? The answer lies in one of two contending, underlying philosophies, which, thrown into the arena of today, are fighting for acceptance."

Did you mean that was not your statement?

A. It was mine only in the sense that I restated earlier writings from which I quoted in the preceding page, I be-
[fol. 257] lieve distinctly.

Q. Will you point out the place for the court and for me?

A. Page 5 is full of quotations which, if I remember right, were from R. G. H. Cole.

Q. R. G. H. Cole is what?

A. A British writer, R. G. H. Cole.

Q. But you have those quotations inside quotation marks, as you have written it.

A. Yes, in the nature of the writing.

Q. And there is no quotation mark around that section which I have just read you from the top of page 6.

A. As one writes, the writer will quote exactly some one else, and then proceed to give the gist of other things of the same writer or writers, without necessarily enclosing it in quotation marks.

Q. Well, is there any indication anywhere that what is said at the top of page 6 is not the lecturer's own statement, that is, that it is what somebody else thinks?

A. Would you please read the last paragraph of the lecture?

Q. The very last paragraph of the whole lecture?

A. Yes.

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Q. It ends with a poem.

A. No, pardon me. I mean the expository part of it:

[fol. 258] "In conclusion, may I say that the choice we are asked to make lies before us."

Q. Going on:

"If an economic system is to be judged on the basis of a worth-while standard of living for every man, woman and child under it, then we must choose accordingly. On that basis I cannot see any hope for economic planning in Italy, Germany, Japan and other such Fascist countries. Nor do I see too much hope for this same economic planning in England, the United States, France and other democratic and pseudo-democratic states. Why? In all these instances unrestrained capitalism is in the saddle, and economic planning for all is wholly inconsistent with, and impossible under, unchecked capitalism. On the other hand, this study and reflection could lead one to conclude that progress, human well-being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization."

A. Now, then, by "socialization" I mean the agencies instituted after 1935, the co-operatives, consumers co-operatives, producers co-operatives, and so forth. Those certainly are checks on capitalism. In fact, they helped to prop capitalism through the decade between 1933 and prob- [fol. 259] ably today. They helped to save capitalism, which was revived considerably during the war and is now being revived.

Q. I note in that concluding paragraph of the actual lecture, leaving out the poem, that you say there is no hope for economic planning in Italy, Germany, Japan, the United States, England and France, most of the leading countries of the world, but I see no mention there of Russia.

A. I knew practically nothing about Russia.

Q. You taught economics?

A. Yes.

Q. And knew nothing about Russia?

A. Not enough to form a judgment which I feel could be passed on.

Q. You gave more attention to the economic conditions in France, let us say, or in Italy, than in Russia?

A. Very likely because we had more information coming out from those than from the last-named.

Q. Going back to that concluding paragraph, the point, as I take it, and I will ask you to correct me if I am wrong, the point is that all of these things you talked about narrowed down to one choice, a choice between the socialistic state and the Fascist state?

A. That is your interpretation.

Q. Is that correct?

A. If it is your interpretation, it is correct, but it is not [fol. 260] my interpretation.

Q. Well, you gave the lecture. Let's have your interpretation.

A. I gave a choice. I said the choice is before us, and I analyzed a number, not only those two.

Q. And the statement, "The answer lies in one of two contending, underlying philosophies, which . . . are individualism and collectivism, which in their latest form we may designate as Fascism and Socialism respectively." That didn't narrow that choice for your listeners?

A. I didn't think I narrowed it down. If the listeners felt then, after the presentation, that capitalism is still all right, then those could select capitalism as one of the states, capitalism or socialism.

Q. Did you feel that capitalism was all right, that it was even possible for it to exist indefinitely?

A. If I could look into the future, I might have said it, but on the basis of the conditions in 1934 or '35, it wasn't so.

Q. But you did say definitely, at the top of page 6, that we were narrowed down to one of those two things?

A. At that moment, yes.

Q. And you said that in your own person, not quoting it?

A. I may not have put quotations there, but I was still [fol. 261] giving the gist of the writers, or a writer, whom I quoted before.

Q. I would like to call your attention to something which I don't think I read from page 1 of that lecture, in the third from the last paragraph, beginning with, "My introductory words"——

A. Yes.

Q. "My introductory words assumed the likelihood of differences of opinion in our midst. Any discussion of eco-

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nomic problems leads inevitably into the troubled waters of controversy. The question whether a lecturer, a teacher, or a writer should or should not 'take sides' in a controversial issue is a very mooted one. Personally I believe that one should 'take sides.' Why? Because I am of the opinion that an honest and careful investigation of economic trends is bound to give the investigator a fairly definite conclusion. The students, the audience, the readers then are entitled to know what the conclusion is and the logic on which it is based. Experience in lecturing and writing has proven that this practice of arriving at and stating conclusions is sound."

A. Will you please read the remainder, why it is sound?

Q. I will. "A conclusion definitely formulated challenges the listener or the reader. It forces him into agreement [fol. 262] or disagreement with the author, which in itself helps to develop logical argument in support of whatever stand he takes. This, again, results in defense or attack on the part of those who take an opposing stand. And it is out of such clashes of conflicting ideas that there comes that development, that growth which is the very core of knowledge, the very life blood of education."

A. In other words, pro and con all the time; not one-sided.

Q. My point is, Mr. Wixman, don't you feel you were on one side when you gave this argument, not that there were two possible sides, but you were on one side?

A. If I had not given an explanation of all economic systems prevalent, I might agree with you, but I do not agree on the basis of what I took.

Q. You agree that your analysis of the possible Fascist and Socialist states were concrete, that they did not at all compare?

A. Yes, as between Fascism and Socialism, I said yes before.

Q. And you did point out at the top of page 6 that that was all the choice there was?

A. Not necessarily. In my opinion, I would have left there the thought, in that from the beginning I give a very careful analysis of the present status of capitalism in 1934 [fol. 263] or '35.

Q. And you predicted its decline.

A. On the basis of 1934 and '35. Don't you accord the right to us, to anyone, to change views as reflected by chang-

ing conditions? There would be no progress, no more education, if we stayed with what we have known before, or what has been known before.

Q. Do you in your own mind, or did you in 1935, at the time this lecture was given, identify yourself or align yourself with the collectivists?

A. Not necessarily.

Q. What do you mean by that?

A. I was interested enough to make a study of it, but to say I was definitely a collectivist is wrong.

Q. Then how would you define a collectivist? I believe there is a definition which you give somewhere in the lecture. I don't see it right now. Do you remember it?

A. Not specifically. But a collectivist, again according to its protagonists, believes in the greatest good for the greatest number.

Q. And how is that to be achieved? I think everyone believes in that.

A. Through the development of more co-operative efforts, which will include more in control of those efforts.

Q. Does that include common ownership of, let us say, [fol. 264] the means of production?

A. If by common you mean public?

Q. Yes.

A. Yes, in certain fields.

Q. Let us say in the field of producers' wealth, the means of production, land, and so forth?

A. Not altogether there, but in——

Q. Go ahead.

A. That is all.

Q. I have found that phrase I was thinking of. I believe I read it before.

> "The collectivist state, according to its proponents," —by the way it is in the middle of page 7—"in brief, proposes that 'all resources, all land and buildings, all manufacturing establishments, mines, railroads, and other means of transportation and communication, should be, not private property, but the common property of all those who work.' "

Would that be your definition of collectivism, now?

A. Yes, that would be a reflection of conditions in 1934. I could say that during the war we resorted to many co-

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operative efforts in order to win the war, to make production more efficient.

Q. Do you believe that private property, the right of [fol. 265] private property, should be interfered with, taken away, whenever some probable or possible good for the whole community requires it?

A. Only where the private control interferes with the greatest good for the greatest number. But if it is—if private property is to be confiscated or taken away, it should be under due process of law, with proper compensation for it.

Q. Have you recently read this whole lecture, the lecture as a whole?

A. No, not very recently.

Q. Can you remember enough of it to be able to tell us now whether this lecture expresses your views of economics at the moment? I am not talking about your views as to what the economic condition of the country is now and what it was in 1935. I am referring to the economic ideas, the economic philosophies set forth in this lecture.

A. No, I have undergone changes in my ideas. It is more than ten or twelve years.

Q. In what respect?

A. In respect to the fact that capitalism can be—can survive with modification.

Q. Then at the time this lecture was given you did not believe capitalism could survive?

A. On the basis of 1934-35 it seemed it was in bad straits. [fol. 266] Q. At this time, at least in 1935 when you gave this lecture, you did believe capitalism could not survive?

A. In 1935, yes. I gave detailed statistics of conditions to justify a stand of that nature. I enumerated and very carefully analyzed the three main factors of an economic society, the natural resources, the human agencies, tools and equipment, and so forth, and education.

Q. Do you believe that when you gave this lecture, and when you expressed the view that capitalism could not succeed, that we had a choice between Fascism and Socialism, and that the things which you said were wrong with Fascism were wrong, and that you were not advocating Marxism at the moment you were giving this lecture?

A. I feel definitely I was not advocating Marxism, and I feel definitely that the things I said about Fascism then were wrong, and proved to be wrong.

Q. But you were not taking the other side, as you put it, taking sides?

A. There was no intention of taking sides.

Q. And when you testify here, as you have testified, that you did not advocate Marxism in your classroom, it means the same thing?

A. Yes.

Q. You still have the same idea in answering that question?

[fol. 267] A. That is right.

Q. As you say, you have not advocated Marxism here?

A. I don't recall advocating Marxism in my classes.

Q. Had you said in the classroom what you have said in this lecture,——

A. Which I would not have said.

Q. —you would not have regarded it as advocating Marxism?

A. I wouldn't have said it in my class. This was a public lecture.

Q. Most of the people listening to the lecture were students from the Los Angeles City College?

A. Probably so.

Q. And there were some faculty members there?

A. I should qualify that. Those lectures were given at three or four o'clock in the afternoon, and I would assume that few students remained on the campus.

Q. How many people listened to the lecture?

A. Oh, I don't know. Possibly one hundred; possibly more; maybe fewer.

Q. In that vicinity?

A. Yes.

Q. Or two hundred, or maybe slightly less?

A. Possibly.

Q. Of that hundred, how many would be students?

[fol. 268] A. I really couldn't recall now.

Q. Would there be, let us say, as many as twenty or twenty-five of the general public that would come in?

A. Yes, very likely.

Q. And roughly, how many faculty members?

A. Oh, possibly, I don't know, maybe thirty-five to fifty faculty members. This was known as a faculty lecture.

Q. I know that, but by that that meant the members of the faculty gave the lecture?

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A. As well as generally attended by the faculty. Other faculty members probably expected me to attend their lectures, so it was a reciprocal matter.

Q. You say you would not have given this lecture in the classroom?

A. Not in the form that it is.

Q. Would you spread it over a number of lectures and say the same thing to your students in economics?

A. No, not at all.

Q. Or to a group of students sitting in the lecture hall?

A. Not at all. Don't forget the students in class were given readings by recognized and accepted text writers, as well as reference papers, and in listening to this I had no way of getting reports.

Q. But you said a great many of the faculty members [fol. 269] and students were present?

A. But faculty members meant faculty members from very many departments who had their own interests to develop.

Q. These matters would be very easily obtainable, would they not, even from you? If someone, say, from the English Department came over to you and said, "I am interested in economics and history. Will you give me the reading assignments?" And you would hand them to him?

A. Yes, I would be glad to. The main fact is that people who listened to those lectures were no doubt maturer intellectually than a class is.

Q. Some of the people?

A. Some.

Q. Wouldn't some of the very students from those classes be there?

A. Very likely they were, and if they were not slightly maturer than others, they were intellectually more curious than the general run of classes. In other words, they were mature enough to be able to criticize that, too.

Q. We had several students from your class in here last Friday who testified that during the course of your lectures you made remarks which struck them as inimical to religion. Do you remember ever saying to your classes, for example, the various clergymen, various religious people were parasitic?

[fol. 270] A. Never.

Q. Or anything of that nature?

A. A statement of that nature is entirely unfounded.

Q. Did you ever say anything of that kind?

A. No.

Q. Did you ever say something to the effect that clergymen were not socially useful?

A. Not at all, because that would not have been my opinion. I happen to have mingled among clergymen of all sorts, of all faiths. I was associated with a clergyman for a considerable time in the capacity of a principal of a large Sunday school, as well as the director of Temple House activities.

Q. Was this at the time you were teaching?

A. No, this was in San Francisco, prior to coming to Los Angeles. I taught Sunday school here in this city while I was teaching, too, teaching at the Los Angeles City College.

Q. You are familiar enough with Marx to know that he characterized religion as an opiate of the people?

A. That is true, but I do not accept Marx necessarily throughout.

Q. How about in that particular case, in that instance?

A. I could not believe it. I did not believe it because I feel religion is a very useful social agency.

Q. Are you acquainted with the existence of a paper pub- [fol. 271] lished on the Pacific Coast, in San Francisco, along about 1935 and earlier, called "The Western Worker"?

A. I recall that paper, yes.

Q. Did you ever read "The Western Worker"?

A. Perhaps. I couldn't specify when.

Q. Did you ever see your own name in there?

A. I don't recall.

Q. Did you ever see a statement in "The Western Worker" in the issue of the 18th of April, 1935, saying that among prominent individuals in Southern California who had endorsed a new paper called "The Southern California Communist" was one Samuel Wixman from Los Angeles City College?

Mr. Ganahl: Just a moment. I am going to object to that as incompetent, irrelevant and immaterial; that if there is such a paper, it is the best evidence.

The Court: Yes, I think it is.

The Witness: It is the first I hear about it right now.

Mr. Ganahl: Just a moment, Mr. Wixman.

The Witness: Oh, pardon me.

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The Court: It is the best evidence. Will you read that question, please?

(The question was read.)

The Court: I think he can answer that question "Yes" or "No."

The Witness: No, I didn't. This is the first I hear of [fol. 272] it right now.

By Mr. Burns:

Q. Nobody ever mentioned that to you?

A. The first I hear of the second paper mentioned is right now. I never knew of its existence.

Q. And consequently, you never endorsed "The Southern California Communist"?

A. That's right.

Q. During the time that you were teaching at the Los Angeles Junior College and Los Angeles City College, did you belong to any associations or clubs of any kind?

A. You mean faculty clubs or student clubs?

Q. Any clubs.

A. Well, I testified before that I was official faculty adviser of two clubs, student clubs, and I was myself a member of the Men's Faculty Club. You mean campus organizations, or off-campus, or what?

Q. Well, I am willing to have you answer about any type of organization, but what I am actually thinking of are political type organizations, and not particular campus clubs.

A. I was a member, a registered Democrat, and helped in campaigns.

Q. Were you ever a member of the Civil Liberties Union?

A. Yes, I was a member of the American Civil Liberties [fol. 273] Union.

Q. Were you a member of the Hollywood Anti-Nazi League?

A. No, I do not recall being a member of the Hollywood Anti-Nazi League.

Q. Were you a member of the League Against War and Fascism?

A. Yes, I was.

Q. Did you have any connection at all with the American Students League? Or, it is changed, it is the American Students Union Association.

A. No connection whatsoever.

Q. Did you ever lecture any group from the American Students League?

A. Never lectured to any such group as that.

Q. I believe you told me earlier in the day that no one in the school, none of the students and none of your fellow faculty members, or your superiors in the school, ever made any complaint to you at all regarding the manner of your teaching, let's for convenience call it Marxism or Communism in your classes?

A. That is correct.

Q. Is that correct?

A. I do not recall anyone.

Q. There has been some reference here, and I don't recall [fol. 274] just where, I don't think it was during your own examination, to the suit that the Board of Education brought against you in about 1940 to remove your teaching credentials, among other things. Do you remember that? Do you remember that suit?

A. Yes, I recall that suit.

Q. Were you informed at the time they brought that suit of the nature of the charges against you?

A. Yes, I recall what they were.

Q. Were any of the charges connected with the thing we are talking about, the teaching of radicalism or Communism, whatever you want to call it?

A. To my recollection, that was not mentioned at all.

Mr. Burns: That is all for now, Mr. Wixman, from me.

Mr. Ganahl: There was one phase of his record that I had neglected to develop on direct, and I would like the opportunity now to do so.

The Court: Raise your voice a little, Mr. Ganahl.

Mr. Ganahl: Yes, I will.

The Court: It is difficult to hear in this room.

Redirect examination.

By Mr. Ganahl:

Q. During the war, Mr. Wixman, in which the United States was engaged, in the last war, what were your activities during that period?

[fol. 275] A. Do you mean war activities?

Q. Yes. What were you doing since the war broke out?

A. In line with the work I was doing, I did help the war effort, at least to the extent I was able to. I helped with the

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U.S.O., and I helped with the Civilian Defense, and so on. I could have done more productive, more important work during the war but for the fact that the Department failed to recommend the citizenship, and those positions required the clearing of the technicality in the citizenship.

Q. You registered for the draft, didn't you?

A. Yes, sir.

Q. And you were classified in that draft?

A. Oh, yes.

Q. Do you recall, Mr. Wixman, the time when you made what you thought was your successful application for citizenship, in that period was there any thought in your mind, or anything that you knew of, that would have told you that you actually had not become a citizen when you thought you had?

A. No thought whatsoever. I was under the impression I fulfilled the requirements. We were told, while already in the service, we were told those who were not already citizens were to file papers for that, which I did.

Q. Now, during the period you gave this lecture, this faculty lecture which has been introduced here as Govern-
[fol. 276] ment's Exhibit 1 in evidence, that was during the period when we in this country were going through the EPIC movement?

A. Yes, sir.

Q. Were you interested in that EPIC movement itself at that time?

A. Yes, I was.

Q. It was also during the period when the first talking or the beginning of unionization of teachers in the schools was taking place; isn't that true?

A. That is correct; that is, locally.

Q. I am talking about locally.

A. Yes, that is correct.

Q. And you were active in that school union movement, were you not?

A. I was one of the organizers of the local union. I was also State president of the Teachers Union.

Q. During that period had any of the State officials in the school department, from Superintendent Kersey on down or up, talked to you or made any objection to your being a union organizer?

A. I don't recall specifically me, talking to me, or against me for those activities. I do not recall it.

Q. Was there anything in those activities that would cause any of these various officials to take an attitude towards you that you might consider prejudicial?

[fol. 277] A. Possibly. The then State Superintendent of Education made a public statement against teachers unionizing, and in my capacity as president of the State Union, I felt it my responsibility to answer, to refute that statement.

Q. During the period of this lecture, and subsequent to that time, and prior to that time and up to the present time, has there ever been any thought in your mind that you were ever advocating the philosophy termed here as Marxism, which we commonly know as Communism, a Soviet system of government to be forced upon the citizens of the United States?

A. Not at all.

Q. You had no thought in mind at any time that you were advocating any such ideas as that?

A. I entertained no such thought.

Q. Now, when you became an employee of B'Nai B'Rith within the last five years, did the officials of that organization go into your record?

A. They must have.

Q. To your own knowledge, in the way they conduct that organization, would they allow anyone who was in any sense disloyal to the ideals of this country and to its system of government to become one of their employees?

A. Definitely not.

Q. Now, in the last five years have you at any time given [fol. 278] any public lecture?

A. None.

Q. Have you at any time in any way—I withdraw that.

One other question. When you found out in 1940, I believe it was, during the declaration of the emergency by the government that you were actually not a citizen, and that this effort of yours in 1918 had only resulted in a declaration of intention for citizenship but had not actually qualified you, did you try to get in touch with others of your comrades who were in the Army with you and who had that same experience?

A. Yes, I made a special trip to the East, to New Haven, Connecticut, to perhaps find evidence of my citizenship, which I assumed they had, but it was too long ago. I was told the records were moved from New Haven to Boston,

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and to Washington, and so on, and I could not track it down.

Q. You made very effort you possibly could to straighten that thing out at that time?

A. Oh, yes, definitely.

Q. In 1918 when you made this application and thought you were sworn in as a citizen, was there any reason at that time why it would have been better for you not to have gone through and become a citizen rather than to have gone through and become a citizen?

[fol. 279] A. No reason whatsoever.

Q. You had every reason to become a citizen?

A. That's right.

Mr. Ganahl: That is all.

The Court: I want to ask the doctor a few questions.

The Witness: Your Honor, I am not a doctor.

The Court: Oh, I thought you were a Ph. D.

The Witness: No. I said in explanation that I had not completed the requirements.

Mr. Ganahl: I think he was a Bachelor of Philosophy.

The Witness: Yes. I did the resident work. I haven't completed the thesis to qualify for a doctor.

By the Court:

Q. When did you enter Yale, Mr. Wixman?

A. In 1917.

Q. I presume after your graduation from high school?

A. Yes, New Haven High School.

Q. Did they teach civics in the high school at that time?

A. I don't recall, your Honor. I don't think so, so far as I recall. I don't think they taught civics. I do not recall it. I remember taking history. I happened to have been in a manual-scientific course, the objective being engineering, as a rule, and a minimum of social sciences was given. I do not recall having any history other than the [fol. 280] English history.

Q. When you matriculated in Yale, what was your major?

A. My major was—primarily, the major was history; history and economics.

Q. History and economics?

A. That's right. Those were my major subjects.

Q. What were the other courses you pursued?

A. I had history, of course. I had literature, I had foreign languages, economics, sociology, or, rather, psychology; some mathematics.

Q. Sociology?

A. No, I do not recall having any sociology. Sociology, as such, was not given at Yale at that time.

Q. Did you take any law at all?

A. No, except comparative government. I remember there was some law there.

Q. Did you take a degree from Yale?

A. Yes.

Q. What was the degree?

A. Ph. B.

Q. Ph. B. What was that at that time?

A. Bachelor of Philosophy. I took identically the same work that all of the other students did who got A.B.s, except those generally selected classical languages, and I selected modern languages.

[fol. 281] Q. You selected German, and what else?

A. German and French; a great deal of German.

Q. You were born in the portion of the Ukraine that at the time was under the sovereignty of Russia?

A. That's right.

Q. What was your objective in going to college? I mean aside from education.

A. To further my education, I think, and for better equipment for life.

Q. What was the equipment you had in mind at that time?

A. For a while I had in mind engineering.

Q. Then after you ceased having engineering in mind?

A. Then teaching.

Q. That was your objective, was it not, to teach?

A. That is right, your Honor.

Q. And you directed your energies to preparing yourself to teach?

A. That's right.

Q. When did you first get a position as a teacher?

A. Formally at Berkeley when I was made an assistant in the History Department, while continuing graduate work.

Q. Was that a postgraduate course at Berkeley?

A. That is right.

Q. What was that course?

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[fol. 282] A. Strictly in history, with economics additionally; but strictly in history.

Q. That was in what year?

A. At the beginning of 1923.

Q. You graduated from Yale in 1921?

A. No, graduated in 1923, because there was a two-year period, including the military period, when I was out of school. Then I returned to Yale and completed my three years, in addition to the freshman year which I completed in 1917.

Q. How old were you when you graduated from Yale?

A. Just twenty-three.

Q. During your Yale experience you took out your first papers, did you not?

A. Yes. It was in 1918, at the beginning of my sophomore year, which also included the military period. In standing, I was a sophomore, but actually I was in military service.

Q. Where did you take out your first papers?

A. In New Haven, Connecticut.

Q. Where in New Haven?

A. I believe the District Court. I believe the District Court—I don't recall—No. 5, but at New Haven, Connecticut.

Q. How did you happen to go there?

[fol. 283] A. Because we were told—while we were in uniform we were told to file our papers with the District Court at the time.

Q. Who told you that?

A. Someone connected with the military, I think. I can't recall it.

Q. Then you didn't follow up those papers at all?

A. I didn't because I had no idea that I would have to. We were told we were taking out the papers, which plus the military service constituted citizenship.

Q. Who told you that?

A. It must have been someone from the military. I don't recall.

Q. You don't mean to say it was anyone in the Clerk's Office of the District Court?

A. No, it was in the military on the campus. I think it was told to everyone, not to any individual, that those who were not citizens should do so.

Q. Should do what?

A. Go to the District Court, to the City, to file papers for citizenship.

Q. But who told you it wasn't necessary to pursue or to follow up the papers?

A. My general impression was that that was said to us. Specifically, I could not recall.

[fol. 284] Q. Do you know of anyone else who had that experience, of your classmates at Yale?

A. That is the reason I went back in 1940, hoping to find some of those who were also in the group.

Q. Did you find anyone?

A. No, I couldn't. I went through the Yale files, and we were told they were transferred to other cities. I even tried to find that announcement, or that order of the day, and couldn't find a copy of it.

Q. When and where did you first register to vote as an elector?

A. I believe in Berkeley in 1928.

Q. In California?

A. That's right.

Q. Did you fill out a blank at that time?

A. Very likely, yes. I presume, as I have registered, there is a record that I filled out in Berkeley, a blank.

Q. What did you say on that about your right to register as an elector of the State of California?

A. I thought I was a citizen on the basis of filing papers in 1918.

Q. Is that what you said on it?

A. I don't recall now what I said, but I presume I said what the blank required, that I was a citizen, and where I became a citizen.

[fol. 285] Q. You don't remember what you said on it?

A. No, I couldn't recall now.

Q. Do you remember what the question was that was propounded on the blank?

A. "Where were you naturalized, and when?" and so on.

Q. And what did you answer?

A. New Haven, Connecticut, 1918.

Q. Is that all?

A. I couldn't recall any more now.

Q. Now, how long did you vote under that assumption?

A. I am not even sure that I voted then. I may have

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voted then, but I know I voted—began to vote, or voted beginning with the election, the general election in 1932, or from then on until 1940, prior to the general election in 1940, when I discovered there was a doubt about my citizenship. Then I volunteered—I went over and volunteered to cancel, asked for cancellation of my voting privilege until the matter was cleared up.

Q. How did the question arise, as to your right to vote?

A. From the correspondence between Mr. Carey McWilliams, as chief of Immigration Housing, and I believe a Mr. Hazard in the national office.

Q. What was the inception of that inquiry?

A. As I suggested before, the family was at dinner and [fol. 286] we heard a broadcast by, I believe, a national officer, or an officer from the national office, an officer from the National Naturalization Office, to the effect that naturalized citizens at this time should always have the evidence of their certification. I didn't have it in my possession. Therefore, my intentions were that Mr. Carey McWilliams' office should write to request a copy of that certification.

Q. How did you happen to appeal to Mr. McWilliams' office in that respect?

A. Knowing that he was chief of Immigration and Housing, and they had one department—one of his departments handled naturalization matters.

Q. You knew at that time that the naturalization matters were handled by the United States Courts, didn't you?

A. Well, that is for actually swearing in and formal filings of it, but this was simply to ask for a copy of the certification.

Q. Yes. But you knew that the matter of naturalization was exclusively a matter for the United States Courts?

A. That's right.

Q. Why didn't you apply to the Clerk of the United States Court for information?

A. Simply because I thought the national office would handle that rather than the local District Court office.

Q. Which national office?

[fol. 287] A. Of Naturalization and Immigration.

Q. And you assumed that Mr. McWilliams was connected with the Federal Government in so far as his activities were concerned?

A. Not connected with the Federal Government, but I knew he was chief of State matters and took it that he

would have more direct relations with the national office.

Q. Are you affiliated with the State Housing or Industrial Agency?

A. No.

Q. You merely contacted him because you knew him?

A. That's right, and knew that one member in his office handled only naturalization matters.

Q. In your lectures before the school, your idea of a teacher was not simply to impart knowledge, but it was to advocate matters, was it?

A. No, sir. No, sir, your Honor, the idea of my responsibility was to impart knowledge, to the best of my ability, but not to advocate.

Q. You did not take the position that the teacher should be an advocate of any certain principle of economy?

A. Not in the classroom; certainly not.

Q. Where else would he?

A. Possibly outside he would have the right of a citizen, a citizen's right to express his views and try to [fol. 288] convince others.

Q. The right of what citizen?

A. The right of any citizen.

Q. You don't make any distinction between the right of a citizen of the United States to express his views in public and the right of an alien to do so?

A. But, your Honor, I didn't consider myself an alien until 1940.

Q. I am asking you a question.

A. Yes, I can see now there might be a difference in the responsibilities or privileges between a citizen and an alien, but I didn't consider myself a non-citizen. I haven't lectured since 1940, since some doubt has arisen.

Q. You haven't lectured since 1940?

A. That is right; since the doubt was raised.

Q. You haven't had any occasion to lecture?

A. I might have had occasions. I can't say.

Q. To lecture before classes?

A. Before groups, but I haven't.

Q. You haven't been teaching since 1941, have you?

A. That is right.

Q. In referring to this Exhibit which was your lecture, on the first page of this lecture, Mr. Wixman, in the fifth paragraph of Exhibit 1, the following matter appears:

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"My introductory words assumed the likelihood of [fol. 289] differences of opinion in our midst. Any discussion of economic problems leads inevitably into the troubled waters of controversy. The question whether a lecturer, a teacher, or a writer should or should not 'take sides' in a controversial issue is a very mooted one. Personally I believe that one should 'take sides.' Why? Because I am of the opinion that an honest and careful investigation of economic trends is bound to give the investigator a fairly definite conclusion. The students, the audience, the readers, then are entitled to know what the conclusion is and the logic on which it is based. Experience in lecturing and writing has proven that this practice of arriving at and stating conclusions is sound. A conclusion definitely formulated challenges the listener or the reader. It forces him into agreement or disagreement with the author, which in itself helps to develop logical argument in support of whatever stand he takes. This, again, results in defense or attack on the part of those who take an opposing stand. And it is out of such clashes of conflicting ideas that there comes that development, that growth which is the very core of knowledge, the very life blood of education."

[fol. 290] What did you mean by that statement?

A. I meant that people expect definite ideas or conclusions from those who specialize in a certain field rather than go through—no one could go through all fields of knowledge, and we accept, let us say, the so-called expert's opinion because the expert is supposed to have gone through a considerable amount of study for and thinking on the subject.

Now, then I will say this, that we have to modify that feeling as far as the classroom is concerned, because, after all, we have to be realistic. If those in authority, school authority, feel it should not be done, then as long as we work with them we do not do that in the classroom. But out in public I feel one has the rights, the privileges of any person. He need not be bound necessarily by the restrictions which restrict him in the classroom.

Q. You made no differentiation between the teacher and the lecturer?

A. Yes. I said teacher, or I said students, but nevertheless I was realistic enough not to do it in classrooms.

I may have stated this in a public lecture, but I wouldn't do it in the classroom, because, after all, I wanted to be practical about it, realistic about it.

Q. Realism would prompt one to state his attitudes, would it not?

[fol. 291] A. If your Honor means that I should have made a distinction there, that a teacher has no right to say it in the classroom, I don't know. In some classrooms people are allowed to; in some instances they are allowed to do that.

Q. I am speaking of a classroom in an American school, where you are teaching the American youth. I am not speaking of any other classroom.

A. I have that in mind, your Honor.

Q. You made no differentiation whatsoever between the right of a lecturer and a teacher with respect to the expression of his own views, own economic views, did you?

A. I believed I was a lecturer then rather than a teacher. This was a free, open lecture.

Q. Is that the only explanation you have for the lack of differentiation between the use of the term "teacher" and the other terms which you used in the paragraph which I read to you?

A. There may be other things. For instance, generally under our democratic procedure we have questions after lectures. Those could be answered more informally, where private views might be given rather than platform views.

Q. Now, in the course of your testimony, Mr. Wixman, you referred to the metamorphosis that had occurred during the war period, in which you laid claim to the fact that it was a collectivist theory that brought about the produc-

[fol. 292] tion during the war. Is that your idea?

A. Not necessarily collectivist, but greater cooperation on the part of greater numbers brought about greater efficiency of production during the war, necessarily for war ends, for victory, for the end of victory.

Q. Do you think those measures should be continued in peace times?

A. If they tend to greater efficiency and greater production and greater goods and greater comforts and necessities for greater numbers, yes. After all, that is the end of production, the greater number of goods produced, and

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to produce a greater number of goods more efficiently and more cheaply so that the greater number can enjoy those goods.

Q. You believe in the governmental control of the means of production in times of peace?

A. Again, where it will do more good for the greater number, government—the end of government is, in my opinion, to see to it that the greater number enjoy more comforts, more necessities.

Q. In the course of your examination, you said that the teacher is a private citizen outside of the classroom. What do you mean by that?

A. That he is not bound outside by restrictions to which his authority in an institution or classroom bind him. He has a right to his private home, his private life, without [fol. 293] necessarily being snooped on.

Q. How can he divorce his attitudes in his private life from those which he is required to follow in the classroom?

A. In the classroom he is a public figure, he has responsibilities which he doesn't have in his private home. Therefore, he has to live up to different responsibilities in the classroom.

Q. For instance?

A. Sympathy for the youth under his charge, and to try to impart education and information to the youth under his charge.

Q. Isn't that his duty in the home?

A. Yes, it is his duty in the home, but his responsibilities are multiplied in the classroom.

Q. You mean there are more people that he must disseminate attitudes to?

A. More people from various environments, different backgrounds, different views. Therefore, one has to be more careful in the classroom.

Q. Do you believe there is such a thing as a natural law?

A. Yes, definitely.

Q. What is your interpretation of the natural law?

A. There are certain happenings in the world, in the [fol. 294] universe, which humans certainly cannot control or do not direct. That I believe is a natural law, the law of nature. There are constellations whirling in a certain order. There are winds and rain, and erosion which man has not been able to produce, or at least to reproduce, to

any extent; something in nature which controls all of that. I would regard that as natural law.

Q. Is that the extent of your appreciation of what is meant by natural law?

A. I am sorry. I do not understand what you mean by "appreciation."

Q. You have mentioned phenomena of cosmic aspects. How about human relations?

A. Human relations are very changeable, because the human factor is a changeable factor. Humans change much more rapidly, much faster. There are many more factors involved, because humans are animate, whereas inanimate matters it is true are controlled, are ruled, are directed somehow but over a greater period of time with regularity, with the same regularity, over a greater period of time, which is not true of humans, because humans have emotions and feelings which may change every minute or every half minute.

Q. Does the basic law which regulates the conduct of human affairs change because there is a change in time?

A. Over a long period of time, yes. There is a basic [fol. 295] law, the basic law that humans must eat, must rest, must propagate, and so on.

Q. How about the law that they must respect property rights of others?

A. Definitely, because respecting others' property, the property rights of others, implies of course, well, the respect of your own property rights. It is a matter of give and take.

Q. Of course, there is a reciprocal relationship under any scheme of law?

A. That is right.

Q. There is supposed to be, but whether there is or not is a question?

A. Well, we assume there is, and in the vast majority of cases there is. Otherwise, we would have chaos.

Q. Either in this Exhibit 1, this lecture, or in some part of your testimony, you referred to a five-year plan. Do you remember in what connection that was?

A. I believe it was read by the government representative somewhere.

Q. Would you point that out?

Mr. Burns: No, I do not believe I read it.

The Witness: There is a reference.

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By the Court:

Q. I haven't read all of this yet myself.

[fol. 296] A. Yes, here on page 5, "The advocates of this idea are"——

Q. How far down is that?

A. It is the end of the second paragraph; in the last two sentences.

Q. Yes, I see it. The paragraph reads thus:

> "This picture as painted is the direct and inescapable result of the logic of events of capitalism of the 19th Century and before. That capitalism was by its very nature, one without a plan. At least not a conscious plan, for whatever planning there may have been in it, was done by a mysterious power—an 'invisible hand', as Adam Smith called it."

What did you refer to there?

A. Adam Smith felt definitely that there was an invisible hand guiding human destinies. Therefore, the new development which occasioned Adam Smith's writings, he felt were a part of that; that, for instance, the new industries, the new machinery, should be permitted to develop, but it is rather despite or through government interference, because he said it was being guided by an invisible hand. In justice to Adam Smith, he judged all humans possibly by himself.

He said, if I recall correctly, that if we let each individual pursue his best, or toward the ends which are best for [fol. 297] him, then all individuals will benefit in the end. Now, he felt that way probably sincerely. Possibly he didn't take into account that some people are not as humane as others are, that some are stronger than others, and, therefore, might take advantage of the weak, which developed, it is true, through the new industrialization, the new machinery, and through which there developed a definite outcry in the 19th Century, up to the late '60s or '70s. You will remember the outcry made by social workers and intellectualists, such as possibly Mrs. Elizabeth Browning, against the enslavement of children, the working of children seven and eight years of age in the coal mines, such children never knowing what the sun looked like or the green fields. I remember reading several poems by her to that effect.

We did produce reforms, we did produce conditions which didn't allow children of that age to be worked from that early age on.

Q. What was the Marxian era?

A. You mean the writing, the actual writings?

Q. No, during what period did he live?

A. He lived, we will say, certainly during the first three-quarters of the Century, of the 19th Century.

Q. Were you referring to that philosophy?

A. No; no.

Q. That is the collectivist theory as opposed to Smith's [fol. 298] theory of individualism?

A. That may have occasioned it, but I am not referring to it necessarily, because a great number of individuals, in England particularly, became the supporters of the movement and certainly were not followers of Marx.

Q. For instance, in England whom do you have in mind?

A. I am trying to recall the Chartist movement, which I have in mind, 1848, which certainly is not a Marxian movement at all; or the reforms for fewer working hours and higher wages, and I am trying to recall the proponents of the schemes for co-operative societies. I can't recall them right now. And those were transplanted to the Americas.

Q. You proceed further in the paragraph which I have read:

> "Now, it became nothing short of blasphemy to attempt to interfere with the operations of that 'invisible hand,' and as long as it functioned somewhat satisfactorily for some, its workings were not questioned. But today a growing skepticism has put economic faith in Providence at a discount."

That "Providence" is capitalized, I think. There seems to be a capital there and then it is sort of obliterated. Did you mean to have a capital there?

A. It was made as a capital.

Q. I will reread the sentence:

> [fol. 299] "But today a growing skepticism has put economic faith in Providence at a discount. As a result, for some years past one has been hearing of a strange new economic doctrine—a capitalist planned economic system. The advocates of this idea are

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'those from the capitalist ranks who have become influenced in part by the great growth of trusts and combines and partly by the example of the Five Year Plans elsewhere. Both, they say, have established an ordered system of production.' ''

What five-year plan did you have in mind when you made that statement?

A. This was a quotation from R. D. H. Cole, and very likely Mr. Cole had in mind the five-year plan of the Soviet Union in the late twenties, I believe.

Q. Do you think that the discerning boy or girl 18 to 20 years of age, listening to that statement by a teacher, would be affected by it?

A. Knowing students as I do, I would not, your Honor.

Q. It would simply go in one ear and out the other?

A. Possibly.

Q. And it wouldn't make any difference who the speaker was?

A. I couldn't tell. I couldn't say, your Honor. Very likely some students might have been affected by it. Many [fol. 300] would not, regardless of who makes that statement.

Q. Don't you know, as a matter of fact, that the teacher is the exemplar, or he is an instrument of ridicule, by the student body in common?

A. We are conscious of that fact.

Q. And if he has the ability to put his ideas across, he can put them across more effectively than any individual in the social organism; isn't that true?

A. Depending upon the age of the student.

Q. I am speaking about the youngster that goes to his first year of college, 18 to 20 years of age. I am not talking about students in the upper classes of universities.

A. There is a certain maturity amongst those students. Certainly there is a social maturity amongst them.

Q. You gave the court the impression, when counsel for the government was examining you here, that you would not have given this lecture in the classroom.

A. Very likely not; not in that form.

Q. Why not?

A. Again, because the classroom would consist—the personnel in the classroom would consist entirely of a younger element than the audience that listened to this lecture.

Q. And there are destructive attitudes in this lecture?

A. I wouldn't take them to be so. I wouldn't have made them if I thought they were destructive attitudes. No, that [fol. 301] was not my intention at all; in a public lecture, or otherwise.

Q. How did you happen to leave the school?

A. Frankly, it was for collective reasons over a period of years. I was outstanding in defending the rights of students, particularly students of certain minority groups which were not accorded the ordinary rights of all students. I was a sponsor of a Jewish student group. I took my responsibilities seriously, and defended them when they needed defending, because I felt definitely that it proved that certain ones in the administration did not give them the protection that the administration should have. As a result, it was true that there were differences of opinion between the administration and myself for some time. All of that collected and became a collective factor.

Q. Do you mean that you left because of what you thought was race prejudice?

A. At least, I took up the matter with the administration, —took that matter up with the administration over a period of years.

Q. There wasn't any race prejudice out there, was there?

A. There definitely was race prejudice, your Honor.

Q. Was that the only reason that you can give?

A. No, there were other reasons that the administration [fol. 302] developed, and as far as I know, there was no basis for them.

Q. Did you contest them?

A. Yes, we contested them, and we settled it at the request of the school authorities.

Q. You settled it in what manner? How did you settle it?

A. That I would be paid one year's salary and that I would be given the recommendation as an employee who had completed some twelve years of teaching there and wished a change, in return for which I was to submit my resignation at the end of that year.

Q. You were to separate yourself from the faculty and not instruct any of the classes?

A. That is true.

Q. That was in 1941?

A. In 1941 is correct.

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Q. And it was after that that you took up your work with the Jewish organization?

A. That is correct.

Q. So that these witnesses who have testified here, Mrs. Berres, for instance, and several others who came and testified, became acquainted with you after you had left the college?

A. As to Mrs. Berres, yes, that is true, but many of them testify I made their acquaintance long before that.

[fol. 303] The Court: That is all.

Mr. Ganahl: Of course, your Honor, I don't want any misunderstanding in your Honor's mind that as to the biggest majority, they knew him before that.

The Court: Some of them did. There is a conflict as between the students.

Mr. Ganahl: In the last five years.

The Court: There is a conflict between the students who were there at the time.

Mr. Ganahl: But the witnesses who testified have known Mr. Wixman, the citizens who came here, and some knew him as far back as 1921 and 1922, and some only in the last five years. I think the majority went back beyond the last four or five years.

The Court: That is all I have right now. Oh, I do have one further question.

Why do you want to become a citizen?

The Witness: Because I am a part of this country since 1911, have considered myself a part of it and had no connections with the country of my birth since 1911. Because I feel this country offers the greatest opportunities, as I said before, of any country, and I feel I can contribute—I have contributed in the past, and feel I can contribute a great deal towards the welfare of this country.

By the Court:

Q. How do you expect to contribute anything further than [fol. 304] you have already contributed?

A. Probably in no other way than by serving others, as I have.

Q. Serving others in what category?

A. I don't know, your Honor. In the category into which I fit best, for which I am fitted best.

Q. Every person is able to evaluate himself, if he has any intellectual processes, and you have a great many. What is your belief, in so far as your usefulness is concerned, by being a citizen of the United States?

A. I feel definitely I was of use as a teacher, and I feel definitely I am of use in my present capacity.

Q. You prefer the teaching, however?

A. Very likely. I had by longest training for it and my longest period of experience in it.

The Court: That is all.

Redirect examination.

By Mr. Ganahl:

Q. This thing of citizenship had not come into your teaching, had it?

A. Yes, sir.

Q. It was on the basis of citizenship that your credentials were revoked?

A. That is right.

Q. You have told his Honor, in answer to a question, that [fol. 305] you went to Carey McWilliams when you heard the statement about citizenship over the radio?

A. That is right.

Q. You had known Carey McWilliams personally before this time?

A. I had. I have known Mr. Carey McWilliams I think since 1934. I think he testified 1938, but I think he didn't recall correctly, and that it is at least since 1934.

Q. And because he was in the Department of Immigration in the State of California you thought you would be able to get your credentials straightened out that way quicker than in any other way you knew of?

A. Yes, sir, because his office would take care of naturalization matters.

Q. At the time you were teaching at City College in 1933 and '34, during that period, was there not a very definite pro-German, Nazi movement going on on that campus?

A. Yes, definitely, there was a pro-Nazi student group, the activities of which finally culminated in the beating of Jewish students on the campus, with the administration having done nothing to prevent it.

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Q. And you were more or less in the vanguard in the fight against that group?

A. That is very true. I considered myself as such.

Q. And incurred their enmity?

[fol. 306] A. Yes.

Q. As a matter of fact, you think that that enmity incurred by that group at that time was the basis of all this fight which has been made against you in your fight for citizenship?

A. I feel definitely so.

Mr. Ganahl: That is all.

Mr. Burns: I have nothing further.

The Court: That is all.

(Witness excused.)

Mr. Gallagher: Mrs. Wixman, please.

Myrtle Heath Wixman, called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: Will you State your name, please?

The Witness: My name is Myrtle Heath Wixman.

By Mr. Gallagher:

Q. Mrs. Wixman, you are the wife of the petitioner, Mr. Wixman?

A. I am.

Q. How long have you known him?

A. Close to twenty-four years.

Q. You have been married to him?

A. I am going into my twentieth year of married life.

[fol. 307] Q. You have a son, do you?

A. Yes, I do.

Q. Have you in all of your experience ever heard Mr. Wixman advocate to your son the principles of Communism?

A. No, I certainly have not.

Q. Is your son a Communist, or does he express communistic preferences?

A. No, he doesn't. He couldn't on the basis of the teaching that he has had at home.

Q. Have you ever heard Mr. Wixman make any statement that led you to suspect that he might not be attached to the principles of the Constitution of the United States?

A. No. To the contrary, he has been a student of the Constitution and there has been many a time when I have been in doubt about my own constitutional rights, and we would take occasion to find out definitely through the books we have in our library, as to what was a constitutional right, and how we should act as a citizen to further the happiness of those around us, and including receiving the benefits as a family unit.

Q. You are a native-born citizen, are you.

A. Yes.

Q. Did you ever hear Mr. Wixman make any statement from which you inferred or concluded that he was not well disposed to the good order and happiness of the United States?

[fol. 308] A. No, his whole life and his whole existence, so far as I have known him, has been devoted to learning what he could do to make himself a better citizen. I was a natural born citizen, and as such, probably took it for granted, but I learned there were many things that I should have cherished more dearly than I did, because he seemed to have known of their existence and how they would function to make a larger and better life for me as an American citizen, and for those around us.

Q. You married Mr. Wixman in about 1927, was it, or somewhere in there?

A. Yes.

Q. Did he from the time that you first met him, until 1940, ever suggest to you or indicate to you that he had any suspicion that he was not a citizen of the United States?

A. No, and it was a deep shock to all of us when that was discovered.

Q. Did Mr. Wixman ever in your presence make any statement that led you to believe that he ridiculed religion?

A. No, he didn't. He is innately the most religious person I have ever contacted. I have contacted many people in my religious background. My mother was of a very religious nature. She encouraged her children to go to church, but she was—she said we should find our faith in our own way, and she gave us an opportunity to talk and

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[fol. 309] visit with people of different faiths. In other words, she felt we should seek our peace in our own way. As a result, I knew people far better, possibly, than some people who have grown up within a certain faith, and have accepted it as a matter of course, as something they eat, or drink, or breathe. I had been given the opportunity to know the reasons and the basis for religious thinking, and in my estimation he is innately religious because he thinks of the goodness, the charity, the things that are innately responsible for good citizenship and a good home.

Q. This next question I am going to ask not because, in my opinion, it is a principle of Communism, or anything of the kind, but some people think it is.

Has Mr. Wixman ever indicated in your presence that he didn't have a high regard for the marriage state or believe in the standard principles of morality, as they are accepted here in the United States? Not as a practice, I mean, but as a principle.

A. There was never any doubt that we could reach our fulfillment only through marriage with the person that one loves and through the fulfillment of one's daily life, to benefit those around you.

Mr. Gallagher: That is all.

Mr. Burns: No questions.

(Witness excused.)

[fol. 310] Mr. Gallagher: The petitioner rests.

COLLOQUY

The Court: Anything further, Mr. Burns?

Mr. Burns: Nothing further, your Honor, from the government except to renew our motion that the petition be denied. I am ready to argue that.

The Court: I do not know that we can hear the argument today. It is now twenty minutes to four. I want to refresh the court's mind on one or two of the facts, and I want to read all of this lecture before I hear the argument.

I might indicate one or two phases of the case that might be discussed, without limiting any discussion that you may want to indulge in generally. That is whether or not the evidence is sufficient to establish lack of attachment to the principles of the Constitution and proper disposition toward the happiness and good order of the American

people during the five years immediately preceding the filing of the petition for naturalization; the burden of proof being on the petitioner, of course, to establish that.

Mr. Ganahl: The way you have stated that, is it whether or not the evidence is sufficient to establish a lack of attachment?

The Court: To establish that the petitioner has shown an attachment to the principles of the Constitution for the last five years, or whether the evidence preponderates to show a lack of attachment. The evidence is conflicting [fol. 311] about his attitudes while teaching out at the college. The weight of the evidence, in my judgment, in so far as that period is concerned, indicates that the petitioner, if the issue was to be determined upon that alone, has not sustained the burden of proof.

Mr. Ganahl: May I ask a question, your Honor.

The Court: Yes.

Mr. Ganahl: Do you base that, if I may ask the question, upon this lecture mainly?

The Court: Not mainly, no. I base it upon the contents of the lecture, together with the testimony of the students. There is a conflict on that score, it is true, but so far as citizens are concerned, we do not want teachers about whom there is any doubt in their attachment to the principles of the Constitution, and so far as this court is concerned, it is not going to admit persons to citizenship who are teachers, concerning whom this court feels there is any lack of attachment to the principles of the Constitution of the United States.

The main feature is the aspect that I referred to, as to whether or not there is sufficient evidence here that preponderates to show that during the five years immediately preceding the petition for naturalization, notwithstanding his attitude during that time, and whether he has proven that during that period he was attached to the principles of [fol. 312] the Constitution of the United States.

Mr. Ganahl: I might say to your Honor that if there is any question and if you really want to open it up, we could bring in a whole court room full of witnesses and still the conflict would be there. It is a difference like in politics, and philosophy and things of that kind.

The Court: I might call counsel's attention to the case of In re Saralieff, from the District Court of Missouri, in 59 Fed. (2d), at page 436.

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Mr. Ganahl: 59 Fed. (2d)?

The Court: Page 436.

Mr. Ganahl: 436; thank you.

The Court: The burden that is imposed on the court since these recent decisions of the Supreme Court in the initial naturalization proceeding is a very heavy burden, because in these denaturalization proceedings the Supreme Court, in its latest pronouncements, has established the rule that the burden rests here primarily, at the inception of the application, and for that reason I think we must go very slowly in admitting people to citizenship, especially where the contention is made by the government that they had not shown attachment to the principles of the Constitution.

Mr. Gallagher: If the court please, may I say this,——

The Court: That will be the line of argument that I will hear from you and hear from the government, bearing in [fol. 313] mind that the burden rests on the petitioner.

Mr. Ganahl: You want us to open and close, then?

The Court: I think you have the right to open and close, yes.

Mr. Gallagher: If the court please, maybe I am wrong, but I haven't heard one iota of evidence to indicate the man was not loyal in the last five years; not one single suggestion by any witness. If I am wrong on that, I would like to be corrected.

Mr. Ganahl: And that is true of their own witnesses.

The Court: I think I can hear you on next Wednesday afternoon, gentlemen.

Mr. Ganahl: That is February——

The Court: February 5th. I have a matter on at 2:00 o'clock on that day, but I think that probably we can hear this matter at that time also.

Mr. Ganahl: At 2:00 o'clock?

The Court: Yes. We will set it for 2:00 o'clock, and we will reach it just after we finish the other matter that is on the calendar.

Mr. Ganahl: Then if I come by 2:30, will that be all right?

The Court: I think so, if Mr. Gallagher wants to open, and then you can close.

Mr. Ganahl: I want to listen to Mr. Gallagher, too.

[fol. 314] The Court: Then you had better be here at 2:00 o'clock.

Mr. Ganahl: I was puzzled by your Honor's statement, and it has perturbed me a little bit, because I can't see where they have shown anything, but we will determine that.

The Court: I am going to take this exhibit and read it. You will not need it. I think the petitioner probably has a copy.

Mr. Ganahl: May I ask one question, if the court does not mind? How would this exhibit, assuming the very worst aspect of the case, have anything to do with the case that existed within the last five-year period?

The Court: I will hear you next Tuesday, gentlemen, at 2:00 o'clock.

(Whereupon, at 4:00 o'clock p. m., Friday, January 31, 1947, an adjournment was taken until 2:00 o'clock p. m., Wednesday, February 5, 1947.-

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[fol. 315] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Paul J. McCormick, Judge Presiding.

No. 126,536

In the Matter of the Petition of SHULIM WIXMAN, for Naturalization

Reporter's Transcript of Proceedings, Los Angeles, California

February 5, 1947.

Appearances:

For the Petitioner: Leo Gallagher, Esq., and Herbert Ganahl, Esq.

For the Government: Frank J. Burns, Esq., Naturalization Examiner.

[fol. 316] Los Angeles, California, February 5, 1947. 2:00 O'clock P. M.

The Clerk: No. 126,536, Petition of Shulim Wixman.

Mr. Gallagher: Ready for the petitioner.

Mr. Burns: Ready for the government.

The Court: Proceed, gentlemen.

ARGUMENT ON BEHALF OF PETITIONER

Mr. Gallagher: If the court please, as I understood your remarks last week, you were concerned to determine what

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beliefs or activities on the part of this petitioner might indicate a lack of attachment to the Constitution and indicate that the petitioner might not be well disposed to the good order and happiness of the United States; and, secondly, whether or not the fact that he had been engaged in teaching, and I suppose you inferred from that might perhaps in the future teach again, that should have some weight in your determination.

You have indicated that you have a serious responsibility here, and I think we can all agree that you have. The responsibility is not merely that you should deny citizenship to this petitioner if he is not a worthy candidate, but that you should grant it if he is a person who should get citizenship. For that reason it seems to me that we should consider what the effect would be if he did not get his citizenship in this case. In other words, it is not just a matter to be determined on the basis of sitting around and arguing a mat- [fol. 317] ter in vacuo, or as a theoretical problem. Undoubtedly this person, if he is denied his citizenship, will have his future life seriously handicapped. I am sure that the organization that he now works for would not consider keeping him if it was indicated that there was the least possibility of his not being loyal to the principles of the Constitution.

Quoting from a statement made in the last Bridges case, dealing, however, with deportation rather than naturalization, it is said:

> "• • • The impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence. A deported alien may lose his family, his friends, and his livelihood forever. Return to his native land may result in poverty, persecution and even death. There is thus no justifiable reason for discarding the democratic and humane tenets of our legal system and descending to the practices of despotism in dealing with deportation."

Referring only to the portion of this quotation which deals with the effect of a deportation on a man's livelihood, I think that portion of the quotation could equally be applied to the petitioner here if he is denied his citizenship.

It seems to me that perhaps we have proceeded in an improper manner in this case in even asking for citizenship

[fol. 318] rather than bringing an action to establish citizenship. We have here a young man who has lived in this country since his early youth, eleven years old when he came to the United States, too young to have scarcely any recollection of the country from which he originated, a product of our public school system. If he has any country at all, it is this country. He volunteered in the last war when he was eighteen years old, indicating clearly an attachment to the country. He didn't have to volunteer. He could have waited until his turn was called. He volunteered, and while in the Army signed a petition to get his citizenship. Now, it could have served no possible purpose for him not to have gotten his citizenship then. Under the law he was entitled to it by signing a certain formal paper and taking an oath. The presumption of the law is that if a person has acted over a number of years as a citizen, he is a citizen. That is a presumption, and the evidence shows in this case that ever since that time in 1918 Mr. Wixman has held himself out as a citizen of the United States, has voted, and has otherwise conducted himself as a citizen. The fact that the records are lost might have some evidentiary value, but as a matter of common knowledge we know that in time of war, particularly at the end of a war, the records are dispersed, and the records of this war since peace, since VE-Day and VJ-Day, I dare say, are in utter confusion in many [fol. 319] places, so it may well be that he did go through all the forms, as he thinks he did, and became a citizen of the United States, and he may well now be a citizen of the United States. So I believe perhaps if we had followed a different procedure,—I came into the case rather late, but if we had immediately, when the question of citizenship was raised, brought an action to have his citizenship declared, it might well be that he might have had his citizenship established by the evidence produced or the failure of the government to produce evidence as to what happened when he was in New Haven in the Army in 1918.

Now, your Honor will recall that the evidence shows that he himself went back and tried to locate records, and was unsuccessful in either locating records or locating any of the persons who were at that time with him, and who perhaps have gone through the same experience that he has with reference to his citizenship, or who perhaps have never raised the question, as he did, in a perfectly natural manner, when the radio broadcast that every naturalized citizen

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should have proof thereof. Then he immediately attempted to produce proof, and for the first time the matter was raised, either by himself or anyone else.

He then went to Mr. McWilliams, a friend of his, who was in the department of the State of California dealing with aliens, a very logical place for him to go, and attempted to have his citizenship established. Not getting his [fol. 320] papers, I would say by way of super-caution and in the alternative, he reported himself as an alien and then immediately attempted to establish his citizenship.

Following that the question is raised by the Immigration Department as to whether or not he is a worthy person to be a citizen of the United States. If being worthy means subscribing to all the principles of a capitalistic state, perhaps he isn't worthy to be a citizen. But I submit the Constitution of the United States was not created and does not exist for the purpose of protecting capitalism, and that a person may well believe in a collectivist state and be worthy to be a citizen of the United States.

In making this particular argument, about how far an alien can go and still be attacked to the Constitution, I am not suggesting that Mr. Wixman goes as far as an alien might well go, but I would like to submit my argument on the basis of how far an alien can go and be attached and be a loyal citizen or a loyal person, attached to the Constitution, and well disposed to the happiness of the people and the government of the United States.

I believe the evidence will show that Mr. Wixman comes far from advocating changes, which he might well do as an alien and still be attached to the principles of our government.

Very briefly, I would like to comment on some of the [fol. 321] evidence that was introduced by the government in order to suggest that Mr. Wixman is not attached to our form of government.

Some citizens were called who were former students of his. Their testimony was extremely vague, and so indefinite that it is difficult to be able to arrive at any legitimate conclusion, because no quotations were given, and nothing that he did. One witness stated that he taught Marxism. Now, what does that witness mean by Marxism? Unable to make any clear explanation, much of the evidence was based upon hearsay. One of the professors said that the

students had complained. Well, what did they say? He didn't say what they said, nor were those witnesses called who complained. It is impossible for Mr. Wixman to rebut such indefinite, hearsay evidence as that. One witness stated that he said something about indulgences. A professor of history makes some reference to indulgences; we don't have to be profound historians to know about the abuses of indulgences in the Middle Ages, and the history books refer to it. I am sure I can go out to the library at City College and pull down a dozen history books that will make reference to indulgences, and certainly a professor has the right to make an explanation from the very books he teaches, and if he didn't, he would be derelict in his duty. The fact that he may criticize the Catholic Church, or the Protestant, [fol. 322] or any other organization, does not make him disloyal to our form of government. There are plenty of abuses in the Church, as you and I well know, and there are abuses in the Protestant Church, and other organizations, and it is not improper for a person to refer to that in the classroom or out of the classroom, unless the students are such delicate plants that they must not even have a breath of information about abuses that exist in the world. Books were referred to. For instance, by Sidney and Beatrice Webb, a standard textbook on conditions in the Soviet Union. Also, "Das Kapital." No intelligent person should be in a position where he must state that he has not even looked in the covers of "Das Kapital." He even went so far as to refer to "Mein Kampf". Now, if we had any objection to his teachings, it would be in referring to "Mein Kampf," because that book taught immorality. You find nothing in "Das Kapital" that is immoral, and you find nothing in Sidney Webb that is immoral. But when a book teaches that one race is superior to another, that people should be prosecuted on account of their race, that is a downright immorality, and although perhaps by a stretch of the theory of teaching that should not be referred to, it should be referred to only to be condemned, and not in an indifferent manner, or without comment.

Some reference was made to the fact that he attended a Marxist School and invited others to attend a Marxist [fol. 323] School. But he himself testified that he never attended a Marxist School, and that he never invited others to do so.

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One student called by the government testified, that is, Mr. Swan, that he attended his classes and that he never spoke of government politics and that he never recommended any other form of government.

I submit, if the court please, that if a man could go through his classes and make a statement like that, a government witness, that certainly Mr. Wixman never taught anything very dangerous in his classes; in fact, I believe we can take notice, as common knowledge of the fact, that no teacher can deviate one millionth of an inch from the accustomed form of teaching and not be expelled from the public schools immediately. They do not tolerate the slightest deviation, and it is utterly impossible to believe that Mr. Wixman might have been teaching on the campus of City College what might be called subversive doctrine, and not be called to account for it. We call the court's attention to the fact that he was never called on the carpet, never criticized for his teaching at City College, and that when he was dismissed, it was not on that account, or, rather, when he resigned they brought an action against him for having collected moneys as a teacher when he was not a citizen, and they dismissed the action and paid him not only for the time that he actually taught, but for some time in the future. They dismissed the action [fol. 324] with prejudice, and, as I say, it is impossible to believe that a teacher could be teaching subversive doctrines and not at least be brought up for investigation, or at least for consultation with the authorities with reference to the character of his teaching.

There was reference to the fact that he belonged to the American Civil Liberties Union,—the American Civil Liberties Union. That just shows the extent that the government sometimes goes to in order to maintain the existing order; the existing order not in the sense of fundamental rights of the people, but the status quo. There should not be even a suggestion that a person is not qualified for citizenship because he belongs to the Civil Liberties Union, or a similar organization.

Two professors were called as witnesses; one his supervisory professor, over him in his department. They never heard him say anything that was improper in the classroom. They never complained. Professor Frankian testified that he never complained to anyone that Mr. Wixman was teach-

ing in any improper manner. Mr. Cruse testified that he rather favored Communism, but there was nothing concrete about what he ever said about the matter. I understood Mr. Cruse to say that he himself recommended the same books that Mr. Wixman recommended, and, in any event, the undisputed evidence is that every one of the books recom- [fol. 325] mended was in the library of the City College.

Mr. Cruse testified that he had, in effect, placed stool pigeons from the student body in groups which were supervised by Mr. Wixman, in order, so to speak, to get something on him. He referred to Mr. Chapman, actually a stool pigeon, a school stool pigeon, and yet they produced nothing that they could criticize.

Mr. Horton was not a teacher, but he testified to having observed Mr. Wixman likewise, like the two school teachers who made themselves a committee of investigation, to supervise his home and to see what he was doing around his home, and he even heard the Internationale played there once. Now, I don't know whether the Internationale was played or not, but assume it was. It is a musical piece that is played all over the world and represents a unity of workers. I am glad to say my little daughter sings it, sings it in the school.

Then reference was made to the fact that Mr. Wixman introduced a Mr. Petal, an Indian, at some public affair in the school. Why, the very fact that it was in the school itself, that somebody was invited to speak, is evidence enough that it could not have been anything very serious that Mr. Petal had to say or the school authorities would not have permitted it. In any event, the criticism should not be of Mr. Wixman, but of the school authorities. However that may be, Mr. Wixman said that he did not introduce him, [fol. 326] if he ever spoke there.

As against those witnesses, whom do we produce? I don't know whether this court has ever heard any case where such a number of reputable witnesses were called on behalf of an alien. I have had a number of cases and I have never called so many witnesses. The law requires two. I have just made a brief summary of the witnesses in this case. Eleven witnesses were his fellow teachers at City College, present there while he was there. Now, I submit if any teacher can produce eleven teachers with him at the time he was teaching, who say that during that

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period he was a loyal—a person loyal to our system of government, that that person has established his loyalty.

Besides the faculty, he produced four students who testified that he was attached to the principles of the Constitution, and so forth. He produced seven businessmen in this city. He produced four teachers besides the members of the faculty. Some of these are in two groups. Seven of his witnesses belonged to the American Legion, and all these witnesses stated they knew him well. It is impossible to believe that there are seven subversives in the American Legion who are willing to perjure themselves to get citizenship for a person who should not get it. Eight persons were professional people, that is, doctors and lawyers and judges. Two were clerics, religious ministers, and four were Jewish [fol. 327] war veterans, and four were neighbors. Mr. Wixman has reason to be proud that he could produce so many, and such reputable witnesses, to his right to be granted citizenship.

The students in his group of witnesses stated that Mr. Wixman emphasized the importance of democracy, and that he did on occasions advocate a modified form of capitalism. Many of these witnesses were asked on cross-examination whether or not Mr. Wixman had discussed Communism with them, or Collectivism, or similar topics, and they answerd, "No," which is not negative proof, in my opinion, but it is very positive proof.

I cannot imagine myself talking to a hundred different people without bringing up the question of politics and economics and the injustices of the present order, and I believe that anyone who happened to be a Marxist would be inclined to do the same thing, and the very fact that numerous witnesses stated they knew him well, that he is loyal, and all that, and that they didn't discuss such problems as Communism shows that he is a person who, while he might be advocating the correcting of certain abuses in the present set-up is not a person who is in any sense an advocate of principles that make him a disloyal person to our Constitution.

The court has referred several times to the fact that an alien cannot do what a citizen can do. In that regard I [fol. 328] want again to call the court's attention to the fact that he thought he was a citizen during all this period, and I believe that the authorities will support the position

that an alien who is legally a resident in the United States can do anything a citizen can do. It may well be that Congress may place certain limitations on citizenship, but the Congress cannot place a limitation on what an alien can say, any more than it can place a limitation on what a citizen can say. And if the Constitution guarantees an alien his right of free speech, it must at the same time restrict Congress in its right to penalize an alien for saying what the Constitution says he has a right to say. To my way of thinking, it is quite obvious that if a person has a free right to do a thing, he cannot be punished at the same time for doing it.

You might say that citizenship is not a punishment. It is a privilege to be granted as the government sees fit to grant it. That is probably true, but the government cannot arbitrarily deny citizenship to a person except for causes which are justified by the Constitution. I believe that a law by Congress stating that only persons with blue eyes can become citizens would be declared unconstitutional, because it has no basis in reason, and I believe also when the question is raised as to whether an alien—if it has not already been decided whether an alien can be limited in his claim on citizenship because he advocates anything [fol. 329] whatsoever less than the forcible overthrow of government. I believe that the Supreme Court of the United States will say that Congress has no such power, and I would like for a moment to direct my argument to that. I am going first to quote two or three paragraphs from the first Bridges case. That is *Bridges* v. *California*, 314 U. S. page 250. It was the case in which Mr. Bridges was charged with contempt for making statements in connection, I believe, with making statements as to a strike resulting from a decision in 1934. In any event, in the course of that decision the Supreme Court stated, and the decision was by Mr. Justice Black,—yes, I do see this had to do with criticism of the courts and as to whether or not making a statement which was a severe criticism of the court amounted to a contempt of court for which a person could be punished, and the Supreme Court said:

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can

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be punished. Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. [fol. 330] For the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of the press.' It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow."

You will recall that Mr. Bridges is now a citizen of the United States. He was an alien at that time. Another quotation:

> "• • • For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."

And a third and last quotation:

> "No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression."

That decision was in 1941. From that I want to refer to the Schneiderman case. In calling our attention to this problem, at the last hearing you referred to the case of Saralieff in 59 Fed. (2d) at page 436, a case decided in 1932, which briefly held that a Communist, a person holding the doctrines of Communism, could not be attached to the principles of the Constitution because he would set up a different form of government, and that this is impossible to do by peaceful means.

[fol. 331] There is nothing in the evidence of that case that would show that a person could not set up an entirely different form of government by peaceful means. Or, let us put it this way: What would stop the people from establishing a Communist government in the United States by peaceful means? What would stop it? Only one thing could stop it, and that would be if the government of the United States would abolish the right of the ballot, or a group of Nazi Fascists in the United States would take over the

government and prevent the people from accomplishing their purpose by peaceful means.

That case of Saralieff I find is referred to in the Schneiderman case once or twice, and it is also referred to in another case, *United States* v. *Wolter* in 53 Fed. (2d) at page 424. That must be Federal Supplement. It is Federal Supplement, at page 424, the Wolter case. That case held that you can establish the state of mind of a person after naturalization by his conduct; I mean you can establish the state of mind of a person at the date of his naturalization by his subsequent conduct, and it held that this particular individual, Wolter, who had been naturalized could have his citizenship taken away from him because of his conduct subsequent to naturalization, and because that conduct indicated what his state of mind was at the date of his naturalization. But, significantly enough, it pointed out [fol. 332] that the reason Wolter was not attached to the principles of the government of the United States at the time of his naturalization was because no Nazi could be. Why? Because they teach the principle that their supreme allegiance is to Germany and to the German people, and obviously a person who teaches that a German in the United States in taking his oath as a citizen must at the same time recognize a superior allegiance to the German people and the German government can not become a citizen of the United States. That principle obviously would not apply to a Communist.

Again, I want to emphasize the fact that I am trying to show how far an alien can go and still be attached to the principles of this government, without in the least indicating that Mr. Wixman would hold any such principles.

Now, coming to the Schneiderman case, that was likewise a case of cancellation of citizenship, or an effort to cancel citizenship, decided in 1943. There are several quotations in here that I believe are worthy of being read, because Mr. Schneiderman was an admitted Communist and believed in principles which go far beyond anything that is charged against Mr. Wixman. In the course of that case the court said, among other things:

> "• • • But because of our firmly rooted tradition of freedom of belief, we certainly will not presume in construing the naturalization and denaturalization [fol. 333] acts that Congress meant to circumscribe lib-

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erty of political thought by general phrases in those statutes. As Chief Justice Hughes said in dissent in the Macintosh case, such general phrases 'should be construed, not in opposition to, but in accord with, the theory and practice of our Government in relation to freedom of conscience.'"

The Macintosh case involved a principle of religious freedom, but naturally the same freedom would apply to political freedom.

The government in the Schneiderman case claimed that the petitioner, Mr. Schneiderman, was not in fact attached to the Constitution or well disposed to the good order and happiness of the United States at the time of his naturalization and for five years preceding that time, because he believed in such sweeping changes in the Constitution that he simply could not be attached to it; and, secondly, that he believed in and advocated the overthrow of government by force and violence.

Now, in support of the position that Mr. Schneiderman was not attached to the principles of the Constitution, it was pointed out that he subscribed to the principles of the Communist party, and that among those principles were these: the abolishment of private property without com- [fol. 334] pensation, and he advocated that. He admitted he belonged to the Communist party and they advocated it in 1927. They advocated the erection of a new proletarian state upon the ruins of the old bourgeois state; the creation of a dictatorship of the proletariat; denial of political rights to others than members of the Party or of the proletariat; and the creation of a world union of Soviet Republics. Statements that American democracy "is a fraud" and that the purposes of the Party are utterly antagonistic to the purposes for which the American democracy, so-called, was formed, were stressed in their program at the time he became a citizen. The court says:

> "Those principles and views are not generally accepted—in fact they are distasteful to most of us—and they call for considerable change in our present form of government and society. But we do not think the Government has carried its burden of proving by evidence which does not leave the issue in doubt that petitioner was not in fact attached to the principles of

the Constitution and well disposed to the good order and happiness of the United States when he was naturalized in 1927.

"The constitutional fathers, fresh from a revolution, did not forge a political strait-jacket for the generations to come. Instead they wrote Article V and the [fol. 335] First Amendment, guaranteeing freedom of thought, soon followed. Article V contains procedural provisions for constitutional change by amendment without any present limitation whatsoever except that no State may be deprived of equal representation in the Senate without its consent. . . This provision and the many important and far-reaching changes made in the Constitution since 1787 refute the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical changes is necessarily not attached to the Constitution."

Then the court quoted from United States v. Rovin, 12 Fed. (2d) 942. I would like to just quote from that, too. As I say, this is quoting from the decision in United States v. Rovin, 12 Fed. (2d) 942. The court says, and this was Judge Cooper, District Judge:

"Nor can I follow the government in its contention that belief by an alien that changes should be made in the form of our government indicates lack of attachment to the principles of our Constitution. The position of the government in this connection is thus referred to in its brief:"

And then the court quotes from the brief:

" 'Defendant's answer to the bill of complaint shows [fol. 336] that he considers that citizens have the right to seek to amend the Constitution and thereby change our form of government; such argument admits the point which the government maintains, namely, that defendant did not believe in the principles as now laid down.' "

Then the court continues:

"An agent of the Department of Justice testified to an interview with the defendant in 1919, during which the latter, while repudiating any desire for revolution

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or force, advocated certain changes in the Constitution, and the witness referred to this fact as evidence that defendant was not attached to the principles of the Constitution. I am unable to accept such a view. The Constitution itself, providing as it does for its own amendment in any respect deemed desirable by the people, seems to me to unanswerably refute any notion of the sort. The history of that great document and of the 19 important changes which have already been made in it, in accordance with its terms, should be a sufficient answer to any question as to whether a desire for such a change indicates opposition to, or absence of attachment to, the principles of our Constitution."

Now, that idea was adopted by the Supreme Court in the [fol. 337] Schneiderman case, by reference at least, and the court went on to say:

"• • • Criticism of, and the sincerity of desires to improve, the Constitution should not be judged by conformity to prevailing thought because, 'if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate.'"

That is quoting from the Schwimmer case. Then I am leaving something out, and the court continues:

"Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed.

"Our concern is with what Congress meant to be the extent of the area of allowable thought under the statute. By the very generality of the terms [fol. 338] employed it is evident that Congress intended an elastic test, one which should not be cir-

> cumscribed by attempts at precise definition. In view of our tradition of freedom of thought, it is not to be presumed that Congress in the Act of 1906, or its predecessors of 1795 and 1802, intended to offer naturalization only to those whose political views coincide with those considered best by the founders in 1787 or by the majority in this country today. Especially is this so since the language used, posing the general test of 'attachment' is not necessarily susceptible of so repressive a construction. The Government agrees that an alien 'may think that the laws and the Constitution should be amended in some or many respects' and still be attached to the principles of the Constitution within the meaning of the statute. Without discussing the nature and extent of those permissible changes, the Government insists that an alien must believe in and sincerely adhere to the 'general political philosophy' of the Constitution. Petitioner is said to be opposed to that 'political philosophy,' the minimum requirements of which are set forth in the margin."

That is the Federal and State Government, the Judiciary, [fol. 339] and the three forms of government, the three departments of the government, and so forth. Continuing:

> "It was argued at the bar that since Article V contains no limitations, a person can be attached to the Constitution no matter how extensive the changes are that he desires, so long as he seeks to achieve his ends within the framework of Article V."

Then the court goes ahead and again points out some of the things that Mr. Schneiderman believed in and advocated:

> "With regard to the Constitutional changes he desired petitioner testified"—that is Mr. Schneiderman's own words—"that he believed in the nationalization of the means of production and exchange with compensation, and the preservation and utilization of our 'democratic structure . . . as far as possible for the advantage of the working classes.' He stated that the 'dictatorship of the proletariat' to him meant 'not a government, but a state of things' in which 'the majority of the people shall really direct their own destinies and use the instrument of the State for these truly democratic ends."

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Then the court says:

> "None of this is necessarily incompatible with the [fol. 340] 'general political philosophy' of the Constitution as outlined above by the Government. It is true that the Fifth Amendment protects private property, even against taking for public use without compensation. But throughout our history many sincere people whose attachment to the general constitutional scheme cannot be doubted have, for various and even divergent reasons, urged differing degrees of governmental ownership and control of natural resources, basic means of production, and banks and the media of exchange, either with or without compensation. And something once regarded as a species of private property was abolished without compensating the owners when the institution of slavery was forbidden. Can it be said that the author of the Emanicipation Proclamation and the supporters of the Thirteenth Amendment were not attached to the Constitution? We conclude that lack of attachment to the Constitution is not shown on the basis of the changes which petitioner testified he desired in the Constitution."

Then the court went on:

> "We have already disposed of the principle of nationalization of the agents of production and exchange with or without compensation. The erection of a new proletariat state upon the ruins of the old bourgeois [fol. 341] state, and the creation of a dictatorship of the proletariat may be considered together. The concept of the dictatorship of the proletariat is one loosely used, upon which more words than light have been shed. Much argument has been directed as to how it is to be achieved, but we have been offered no precise definition here."

I am going to skip some in there, and come down to where the court says:

> "• • • These would indeed be significant changes" —the fundamental changes referred to above that I have just read—"in our present governmental structure—changes which it is safe to say are not desired by

> the majority of the people in this country—but whatever our personal views, as judges we cannot say that a person who advocates their adoption through peaceful and constitutional means is not in fact attached to the Constitution—those institutions are not enumerated as necessary in the Government's test of 'general political philosophy,' . . ."

Then skipping some more, the court went on to say:

> "• • • We decide only that it is possible to advocate such changes and still be attached to the Constitution within the meaning of the Government's [fol. 342] minimum test.
>
> "If any provisions of the Constitution can be singled out as requiring unqualified attachment, they are the guaranties of the Bill of Rights and especially that of freedom of thought contained in the First Amendment."

Then skipping, and continuing:

> "We should not hold that petitioner is not attached to the Constitution by reason of his possible belief in the creation of some form of world union of Soviet Republics unless" — he could advocate a world union of Soviet Republics and not be charged with a lack of attachment to the Constitution of the United States, the court says.

Let me read that again:

> "We should not hold that petitioner is not attached to the Constitution by reason of his possible belief in the creation of some form of world union of Soviet Republics unless we are willing so to hold with regard to those who believe in Pan-Americanism, the League of Nations, Union Now, or some other form of international collaboration or collective security which may grow out of the present holocaust."

This decision, by the way, was written by Mr. Justice Murphy, and not written by a Bolshevik, but written by a [fol. 343] member of the Catholic Church, and an honor to the Catholic Church because of his views. Continuing:

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> "If room is allowed, as we think Congress intended, for the free play of ideas, none of the foregoing principles, which might be held to stand forth with sufficient clarity to be imputed to petitioner on the basis of his membership and activity in the League and the Party and his testimony that he subscribed to the principles of those organizations, is enough, whatever our opinion as to their merits, to prove that he was necessarily not attached to the Constitution when he was naturalized. The cumulative effect is no greater."

Then Mr. Justice Murphy went on and took up the problem of the clear and present danger and referred to two types of revolution; one, forcible revoluation, and the other by peaceful means, and then he went on to say:

> "Because of this difference"—the reference is to clear and present danger as effected by the probability of the use of clear and immediate violence—Because of this difference we may assume that Congress intended, by the general test of 'attachment' in the 1906 Act, to deny naturalization to persons falling into the first category"—people who believed in the forceful overthrow of government—"but not to those in the [fol. 344] second"—those who believe in any change of government provided it is by peaceful means. "Such a construction of the statute is to be favored because it preserved for novitiates as well as citizens the full benefit of that freedom of thought which is a fundamental feature of our political institutions."

I submit, if the court please, on the basis of that case that a person can believe in anything and he can advocate anything, and an alien can advocate anything in this country, any change whatsoever, so long as he does not advocate the use of force and violence, and still be attached to the principles of the Constitution and to the good order and happiness of the people of the United States.

That was followed up by the next Bridges case. If I am boring the court and taking too much time I wish the court would tell me, but I think this is extremely important, and I have three or four cases I want to refer to, although not as long as the Schneiderman case.

In the next Bridges case, which was the deportation case, the court said:

> "• • • It is clear that Congress desired to have the country rid of those aliens who embraced the political faith of force and violence."

They are subject to deportation.

> [fol. 345] "But we cannot believe that Congress intended to cast so wide a net as to reach those whose ideas and program, though coinciding with the legitimate aims of such groups, nevertheless fell far short of overthrowing the government by force and violence. Freedom of speech and of press is accorded aliens residing in this country."

I don't know how it could be said more clearly that an alien could advocate anything a citizen could advocate, and he can advocate anything except one thing, the forcible overthrow of government. Skipping again, the court said:

> "• • • 'That Bridges' aims are energetically radical may be admitted, but the proof fails to establish that the methods he seeks to employ to realize them are other than those that the framework of democratic and constitutional government permits.' "

Another quotation from a concurring opinion by Mr. Justice Murphy:

> "• • • But once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. Such rights include those protected by the First and the Fifth Amendments and by the due process clause of the Fourteenth Amendment. [fol. 346] None of these provisions acknowledges any distinction between citizens and resident aliens. They extend their inalienable privileges to all 'persons' and guard against any encroachment on those rights by federal or state authority. Indeed, this Court has previously and expressly recognized that Harry Bridges, the alien, possesses the right to free speech and free press and that the Constitution will defend him in the exercise of that right. . .

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"Since resident aliens have constitutional rights, it follows that Congress may not ignore them in the exercise of its 'plenary' power of deportation. . . No less may a statute on its face disregard the basic freedoms that the Constitution guarantees to resident aliens."

Saying, in other words, that any statute that limits the right of an alien to say his say is unconstitutional.

"The Chief Justice, in his dissenting opinion in Jones v. Opelika, . . . has stated that 'the First Amendment prohibits all laws abridging freedom of press and religion, not merely some laws or all except tax laws.' By the same token, the First Amendment and other portions of the Bill of Rights make no exception in favor of deportation laws or law enacted [fol. 347] pursuant to a 'plenary' power of the Government. Hence the very provisions of the Constitution negative the proposition that Congress, in the exercise of a 'plenary' power may override the rights of those who are numbered among the beneficiaries of the Bill of Rights."

Then he goes on to show that legislation of this type is unconstitutional and that any statute that limits an alien's rights beyond his limitation as to the use of force and violence is unconstitutional.

I am going to refer just briefly to two other cases. One is the Rossler case. I will admit this, that some other court, and I don't have it at hand now, and not a higher court, but another court stated that it did not quite approve of this statement. This is what Judge Hand, Learned Hand, says in the Circuit Court of Appeals, 144 Fed. (2d) 463, *United States* v. *Rossler:*

"Even were the test not so severe as that which the Supreme Court has set in Schneiderman v. United States,"—giving the citation—"it would be clearly unwarranted to assume from such expressions as these that, when Rossler took his oath in December, 1935, he wished those political principles to prevail in the United States, which he favored for Germany. And, indeed, [fol. 348] even if he preferred an authoritarian system here, he might not have wished to have it imposed by

violent means, but have been content to go along as a law-abiding American citizen. That attachment to the principles of the Constitution which the law exacts at naturalization is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government; but merely an acceptance of the fundamental political habits and attitudes which here prevail, and a willingness to obey the laws which may result from them."

I think that really is the proper test of loyalty, whether or not a citizen is willing to go along under our form of government and obey the laws, even though he disapproves of them, even though he wants to amend them, even though he is going to use his utmost effort to change them. If he is willing to abide by the laws as they exist, including the constitutional provisions for change, he is loyal to our form of government; far more loyal than a person who merely supports a status quo, because the status quo happens to be something that is to his economic advantage or something that will not single him out as being in the minority. The world is in evolution. The very fact that things are as they are is proof they are wrong because the history of evolution is that things will progress. There- [fol. 349] fore, there must be a minority that holds the right view as against the majority who maintain the established fact.

All you have to do is look at history, and pick out any date in history, and you will find that the established order as of that date was wrong because we have evolved beyond it, and it is obvious the world is going to evolve beyond what we are now, and the person who is not willing to face the truth that we are bound to have changes, he is not loyal to the government of the United States, and he is for protecting privilege rather than having in mind the good order and happiness of the United States.

Another case from this very division of this District is the case of *United States* v. *Korner*. That was a case before Judge Hall, and in his opinion he sets out his views as to the right of an alien. This was also a cancellation case, but it discussed whether or not an alien is disloyal for holding views which were favorable to the Nazi form of government. This is the case of *United States* v. *Korner*, decided June 13, 1944, 56 Fed. Supp., page 242, and the court says:

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"It must be regarded as settled that each liberty specified in the First Amendment of the Constitution is a liberty which is secured by the due process clause of the Fifth Amendment to all persons without regard [fol. 350] to citizenship. If that proposition was not settled as to constitutional rights generally by Yick Wo v. Hopkins,"—and he cites a great many other cases—"then certainly it must be considered as settled by the Schneiderman case,"—then he quotes from Bridges v. State of California. Then he says:

"The fact that the exercise of a liberty of the First Amendment is likely to result in some violence is not enough to justify its suppression. There must be the probability of serious injury to the State."

He then develops the theory of clear and present danger, and then goes on:

"In the naturalization and immigration laws Congress has done that very thing. It absolutely prohibited entry into the country or the naturalization of anarchists, political assassins, and polygamists. There Congress 'appraised' the situation and 'found a specific danger sufficiently imminent' to result from the presence in the Country or naturalization of anarchists, polygamists, and political assassins to justify their exclusion and denial of citizenship to them.

"But there is no comparable enactment concerning [fol. 351] one who advocates the doctrines charged against the Bund, or any other political philosophy. It cannot be said that Congress has seen any danger in any other doctrine than those which it thus chose to categorize and specifically prohibit.

"Congress did not define the 'circumstances' under which a clear and present danger would exist generally. Congress did not prohibit the doctrines of the Bund or specifically deny citizenship to its members or the adherents of its doctrines as it did with anarchists, political assassins, polygamists, and those who advocate the overthrow of the government by force and violence. It follows that defendant's membership in and activities in connection with the Bund are not enough standing alone to state a cause of action for

cancellation of citizenship. Such membership and activities standing alone come within the protection of the general constitutional rule which guarantees freedom of thought, speech, and assembly."

Skipping some:

"• • • The exception to this general rule arises when a clear and present danger is created or caused because of special circumstances. Therefore, such circumstances must be pleaded or facts stated which show [fol. 352] how the clear and present danger is created, when thought, speech, or action, other than the positively prohibited ones, is depended upon as a ground for relief in a cancellation proceeding, such as this one.

"Hence, for the Government to be properly in court, there must be allegations of fact in the complaint from which it can be concluded by the Court that the defendant's membership in the Bund and his activities in and in connection with it either themselves created a clear and present danger at the time of their doing, or that such circumstances then existed that from the 'proximity and degree' of such membership and activities, such danger was 'extremely serious and the degree of imminence extremely high.'"

That again maintains that an alien can advocate anything so long as he does not advocate the forcible overthrow of the government, and he can even do that, unless it is in a situation where his so advocating would amount to a clear and present danger of substantive value, of a serious nature to the government of the United States.

One matter I haven't referred to is that lecture which was given to teachers, at which some of the students happened to be present, as I understand it, and the lecture refers to collectivism and criticizes the economic set-up in [fol. 353] the United States as of that date. Well, what intelligent American in the '30s wasn't criticizing a situation where there were millions of unemployed, and there was something radically wrong with the government and those in power were not doing what they should have done towards alleviating that condition? We had to have hungry mobs that had to go down and submit themselves to being beaten and brutalized by the police in order to get

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food for their children. There was something fundamentally wrong, and we didn't do anything about it. Just as we don't do anything today about the fact that 10 per cent of our population exists under such shameful conditions as the Negroes do in the United States. Any person who is not a rebel against the situation in the United States that treats Negroes with such inhumanity is not attached to the principles of the Constitution of the United States.

Whatever he said in that lecture I submit is certainly protected by the principles which have been set out in the cases from which I have read, from the Supreme Court of the United States. But even that was way back in 1934 and 1935, and since that time Mr. Wixman, if he held those views then, which I submit were perfectly lawful, and which he explains was not advocating a forcible overthrow of government or any fundamental change or any change except by peaceful means, and then a form of collectivism which is certainly not in any way opposed to our form of govern-[fol. 354] ment; an extension of the Post Office system, to include other industries and perhaps all industries. There is certainly nothing disloyal about that. Looking at England today, can anyone say that the majority party of England is disloyal to the British people, and what they are doing is just nationalizing various industries. They have taken over the coal mines, and they are going to take over the railroads, and they are going to nationalize everything. Let us assume the same process was taking place here in the United States. You cannot say that the people who advocate those things are disloyal. Perhaps those changes are indispensable to the welfare of the people, and otherwise there may be a total breakdown of government and we will have anarchy. Who knows what is going to be the situation after the next few years, after production catches up? We are producing almost twice as much as before the war. What is going to happen in a few years when production is going to fill the immediate needs, and when four people or five can do what a hundred did before? We will then have fifteen million who are unemployed at that time, and we are going to have, in my opinion, a complete breakdown of our whole economic system unless there are a sufficient number of forward-looking people who will make substantial changes towards co-operation towards collectivism and limit the possibility of tremendous exploitation that exists in the country at this time.

[fol. 355] I submit, if the court please, there is nothing in this case that shows that in the last five years Mr. Wixman has not been attached to the principles of the Constitution and well disposed towards the good order and happiness of the United States; nothing whatsoever; not an iota of evidence in the last five years. All the evidence is one way, and I submit if you go back into his background, back ten or more years, that he has neither said or done anything that shows he was disloyal to our Constitution, and that, therefore, he should be granted his citizenship.

The Court: Mr. Burns.

ARGUMENT ON BEHALF OF GOVERNMENT

Mr. Burns: If the court please, Mr. Gallagher began his statement in favor of Mr. Wixman's naturalization with a reference to the fact that there was some possibility that he was naturalized in 1918, during the time that he was a member of the Army at Yale University. I myself have very serious doubts as to whether Mr. Wixman was naturalized at that time. He has testified about it here on the stand in the course of this trial, testified vaguely as to the facts, and states there was some sort of a courtyard in which he remembers being sworn in. In the United States, not even in the Army could one be naturalized except by a United States Court, and it seems most unlikely that he was admitted to citizenship at that time. Be that as it may, however, what he has done here is to assert that he is an alien [fol. 356] and applies for citizenship, applies to be admitted to citizenship by this court. No criminal proceedings are being brought against him here; no deportation proceedings. The cases cited by Mr. Gallagher and the cases from which he argued are, for the most part, cases which guarantee to the alien or restate the constitutional guaranties to the alien and restate the privileges to the alien in regard to free speech. That is understandable, so far as being prosecuted is concerned for anything that they may say. They may have just as much or as many rights as citizens; probably have. That is not an issue in this case. We are not making any criminal charges against Mr. Wixman here. The effect of deportation proceedings is just as bad in many cases as the effect of a conviction in a criminal matter. A person is taken away from his family and suffers economic

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loss, and so forth, but no deportation proceedings are in issue here.

This man has an application before this court to be admitted to citizenship, and the only thing to be considered is as to what the nationality laws require. Section 307 of the Nationality Act of 1940 requires that the alien be of good moral character and that he be attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States for five years immediately prior to the proceeding, of the filing of his petition.

[fol. 357] The government's objection to the naturalization of Mr. Wixman is based on the ground that he has failed to establish that he has been so attached and so well disposed. It is always a difficult thing to prove what is in somebody else's mind. Attachment, and favorable disposition to the Constitu-ion of the United States, or anything else, is a mental state. It is hard to get at. It can only be judged by what the man says and does. In this case we have attempted to show, and I think have shown, that during the time that he was teaching at Los Angeles City College, formerly Los Angeles Junior College, that this man held views which precluded his being attached to the Constitution of this country. The testimony of his former students, and we had five on the witness stand, was to the effect that his teachings were favorable to Communism and to Marxism at the time that they were in his classes. Now, it is some years ago since they attended those schools, or that school, and those classes, and they were not able at this late date to recall in great detail the things that he said. However, they were all young men and women who had graduated from high school, who were able to evaluate what was being told or taught to them. They did have the idea that Mr. Wixman was favorable to Marxism and Communism in those classes, and they were able to remember some things which were the basis really of their views. They made reference to the books that Mr. Wixman recommended and [fol. 358] to the fact, as one lady did, that he had ridiculed religion in the class and cited the example mentioned by Mr. Gallagher, that he had said, as I remember her testimony, that even now the clergy were profiting by the sale of indulgences.

He did mention, Mr. Wixman himself from the stand, that he also mentioned "Mein Kampf," put it on his list

of readings. We don't claim that he subscribed to the opinions in "Mein Kampf," and certainly the government of the United States does not subscribe to them. We are in no sense trying to support the things set forth in there, the racial prejudices or anything of that sort. I don't think anybody, any reputable person in the whole United States, recommends those views.

The most damaging evidence against Mr. Wixman, in my own opinion, is the evidence contained in that lecture, which he admits giving on at least one occasion. That occasion was an open lecture. It was called a faculty lecture because the members of the faculty were giving those lectures. It was one of a series. The lecture was open to students and was open to anyone else who cared to come in off the street. Mr. Wixman testified there was a fairly large percentage of students present. I don't remember what figure he put it at; maybe 25 per cent; but at least there were a number of students at that lecture. There may be some reason for [fol. 359] thinking that these things might be all right in discussions with mature people, whose political views had become more or less set, and that that would not be all right for teaching to these 18 and 19-year-old children out of high school, but, be that as it may, the thing that the lecture indicates very clearly is what Mr. Wixman himself thought. Mr. Wixman said that in his classes he did not teach or favor Communism or Marxism. He also said from the stand he didn't favor or advocate Communism or Marxism in that lecture. I think the value of the first answer, that he wasn't teaching that in his class, but merely discussing it neutrally, may be judged by the second answer where he says that lecture which he submitted himself was not favorable to Communism or Marxism. If the word "Communism" does not appear in that lecture anywhere, that is not strange. He would not be using such terms in addressing these people in the school. But the idea of Communism is there, the idea of Marxism, the ideas expressed in "Das Kapital," the prediction of the privileges of the State, the inevitable future history that Marx predicted, and it is discussed favorably. Fascism is set forth, in his own words, and in his own opinion, as the only other alternative, and is condemned. There is not one word of condemnation of the so-called collectivist state that he devoted the balance of his lecture to.

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A great deal has been made here of the Schneiderman decision. The sections of the decision read by Mr. Gallagher [fol. 360] are from the opinion of Mr. Justice Murphy. With all due respect to Mr. Justice Murphy, they are not the opinion of the court. That is merely a concurring opinion. The Schneiderman case was a case in which it was sought to set aside the naturalization of Mr. Schneiderman, who had been naturalized quite a few years ago, quite a few years before the case was heard.

Mr. Gallagher: May I make a correction there, if the court please? The Murphy decision is the decision of the court,—the decision by Mr. Justice Murphy.

The Court: It is the main opinion?

Mr. Gallagher: The main opinion.

The Court: I think you are both correct and both incorrect. Mr. Justice Murphy wrote the main opinion.

Mr. Burns: That was my impression, your Honor. I did not have the book here, and I thought Mr. Justice Douglas had written the main opinion.

Mr. Gallagher: Mr. Justice Murphy wrote the main opinion of the court.

Mr. Burns: That is correct. I stand corrected on that. I thought his was a concurring opinion.

Mr. Gallagher: That was in a later case. That was in the later Bridges case.

The Court: And Mr. Justice Douglas, I think, wrote the main opinion in the Bridges case.

[fol. 361] Mr. Burns: I think that is what I confused it with, your Honor, from memory.

The Court: Yes.

Mr. Burns: The ground of that opinion is, I think, that the attempt to take away the citizenship which was conferred upon Mr. Schneiderman was not timely, that these matters were available to the authorities prior to the time that Mr. Schneiderman was naturalized, and the place to urge those things against this man was at the time that his naturalization petition was to be heard; that in cancellation proceedings a former alien had a more or less vested right in citizenship, and the strongest kind of evidence of all the points involved would be necessary to set it aside.

I don't have the decision here and I can't read from it, but your Honor is probably familiar with it. Here, for example, is what Mr. Justice Murphy said:

> "We are dealing here with a court decree entered after an opportunity to be heard. At the time petitioner secured his certificate of citizenship from the Federal District Court for the Southern District of California notice of the filing of the naturalization petition was required to be given ninety days before the petition was acted on . . ., the hearing on the petition was to take place in open court . . ., and the United States had the right to appear, to cross-examine peti-
> [fol. 362] tioner," and so forth. "We do not know whether or not the Government exercised its right to appear and to appeal. Whether it did or not, the hard fact remains that we are here re-examining a judgment, and the rights solemnly conferred under it.
>
> "This is the first case to come before us in which the Government has sought to set aside a decree of naturalization years after it was granted on a charge that the finding of attachment was erroneous. Accordingly for the first time we have had to consider the nature and scope of the Government's right in a denaturalization proceeding to re-examine a finding and judgment of attachment upon a charge of illegal procurement. Because of the view we take of this case, we do not reach, and therefore do not consider, two questions which have been raised concerning the scope of that right."

The decision was rather lengthy, as your Honor probably remembers. There is language in the main opinion in the case to the effect that it was too late a date to establish these things against Mr. Schneiderman, that they should have been done at the time he filed his petition for citizenship and at the time that his petition was given a final hearing.

There is that distinction in this case, and in the other cases [fol. 363] that he cited from Judge Hall here, the Wolter case, and the other case, because both of them were cancellation cases.

I believe that the law on the subject, as to whether or not a man is eligible for citizenship by reason of being attached to the principles of the Constitution, is the law as is set forth in the Saralieff case, which your Honor cited to counsel about a week ago last Friday. If the language used by Mr.

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Gallagher in limiting, or actually putting no limits, in effect, on what an alien may say, with the exception of saying that he may not advocate the overthrow of the government by force and violence, is correct, then there does not seem to be any reason for Section 3 of the Nationality Act at all. If the alien is required to be attached to the principles of the Constitution in order to be naturalized, and it makes no difference which part of the Constitution he wishes to change, that all he must be attached to is the Bill of Rights, which is in effect what Mr. Gallagher has said, then there is no need to put that in there at all. Attachment is a thing of the heart, and of the mind, too. The alien is required to believe in the principles of the Constitution of the United States. He might believe that the Constitution should be amended so as to provide for the direct election of the President instead of through a college of electors, but that would [fol. 364] not be a principle. That is merely a mechanical part of the government. He might believe there should be a single House of Congress instead of two. That is another mechanical thing. But the things set forth in the Saralieff case —that he believes in the division of the powers of government between the three different departments, that he believes in the right of private property and that he believes in a non-totalitarian free state are required. Now, anybody that believes in a Marxist state or believes it should be brought to influence and power in this country, does not believe in freedom. The whole history of countries like Russia, and others, where totalitarian states have come into power, particularly Communist states, is that there has been a cessation of personal liberties there. I think the court may take judicial notice of the fact that in the lecture "Economic Trends," Mr. Wixman advocated it, or at least referred to it favorably, not neutrally, as he said on the stand. The thing that he said was to come, the thing that he called collectivism, was going to lead to more and more collectivism, it was going to lead to a proletarian state, following this one, a state dictated over by the proletariat, and another so-called Socialist state that was going to follow that before the ideal communistic Utopia came into existence.

When he was on the stand and I was questioning him about it, and I read to him about it for several hours, at no part of his own testimony did he specifically and emphati- [fol. 365] cally disavow the opinions set out in that lecture.

He did say that he would not give the lecture now, and I asked him why.

Mr. Gallagher: If the court please, if Mr. Burns is referring to something that took place in his office, I don't think that is proper.

Mr. Burns: No, I am referring to what took place in this court room in the other sessions.

Mr. Gallagher: In the testimony.

Mr. Burns: In the testimony, that is right. He did say that he would not give the lecture now, from the stand in the earlier hearing, and he was asked why, and he said because conditions have changed now, because at the time this lecture was given it was during the depression in the United States. There is nothing in that disavowal of the opinions expressed in that lecture to indicate that if there were another depression tomorrow he would not hold the same opinions again.

The question arises, and your Honor has asked us to give some time to it in our arguments, as to whether or not these matters which took place during the time that Mr. Wixman was teaching at the City College may be urged against him in opposition to his petition for naturalization now, it being something more than five years since he stopped teaching there.

In the first place, in attempting to find out what this man's beliefs and attachments are, it is of evidentiary value to [fol. 366] know what they were. He put on a great number of witnesses on this stand. We could have called a great deal more. I don't know whether we could have kept even with the petitioner and his counsel, if we had just matched numbers of witnesses. We could have called more students and we could have called more people generally, who would — testified along the lines that our witnesses did testify.

Mr. Gallagher: If the court please, I submit that is improper argument. If he had other witnesses, he should have produced them and not argue that he could have made a much stronger case than he did.

Mr. Burns: I am not arguing that I could have made a much stronger case than I did. I am arguing that if we did produce more witnesses than we did it would simply have been cumulative.

Mr. Gallagher: Even cumulative evidence is cumulative evidence. I submit he should limit his argument to what is in the record.

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Mr. Burns: As to the number of witnesses Mr. Wixman and his counsel put on the stand, they were for the most part, not all of them but for the most part, people who have known him only during the time, or at least have seen him frequently only since the time he left the school out there. There were 11 teachers. They called 11 teachers who had taught during the time he was out at the Los Angeles City [fol. 367] College. Most of those 11 were not from the social sciences faculty. They were teachers of English, and I remember one was in the nursing department, or a nurse, anyway, and teaching something along those lines. I believe there was one or two from the social sciences faculty, although I can't recall at this moment for sure. But all of them, even those from the social sciences faculty, if there were any, testified that they had not discussed what Mr. Wixman taught in his classes with Mr. Wixman; that they had not discussed what he thought about the Constitution, about Communism, about collectivism, and things of that sort. In fact, of all of the great number of witnesses that he called, and I asked every one of the witnesses that question, with the exception of Mrs. Wixman, and only one or two said that they had ever discussed those things with him at all, and on being questioned as to details about what they had discussed with him, they were unable to remember; they assumed they must have mentioned these things to him, since they knew him well and had seen him, and so forth, and so on, and that their opinion was that he was loyal to the country and attached to the Constitution. Their value as witnesses was entirely negative, at least, as far as the matter of Mr. Wixman's attachment to the Constitution is concerned.

So we have the situation here where during the last five years, and, incidentally, a good part of those five years, I [fol. 368] don't know exactly how long, Mr. Wixman has been in his present position and has done a great deal of traveling. He has not been in a position where he was expressing his views as he was as a teacher and as a lecturer. We are unable to find witnesses who could testify as to anything he had done or as to anything he had said during the last five years. The witnesses placed on the stand by the petitioner himself, and as I have just pointed out, testified very little as to his attachment to the Constitution. Consequently, for that reason alone, it would be meet and proper to consider the things that happened more than five years ago, during the time that he was teaching at Los Angeles

City College, as indicative of what his views are now, especially, and I want to emphasize this again, your Honor, since he did not disavow those views with any positiveness when he was on the stand. There is judicial authority for that. There is judicial authority for that. In the case of *In re Gabin*, in 60 Fed. Supp., at page 750,——

Mr. Ganahl: What was the page, please?

Mr. Burns: — page 750, the court said that it was not restricted in its inquiry concerning the fitness of would-be citizens to the five-year period; that that period, which is set forth, of course, in Section 307 of the Nationality Act of 1940, merely fixes the minimum time in which the petitioner must show attachment to the principles of the Constitu-
[fol. 369] tion.

That decision, which was by Judge Goodman in the District Court of San Francisco, cites the cases of *In re McNeil*, 14 Fed. Supp., page 394; *In re Ross*, a Circuit Court of Appeals case——

Mr. Ganahl: The McNeil case is a District Court case, too, isn't it?

Mr. Burns: Yes, the District Court of San Francisco. The Ross case is a Circuit Court of Appeals case, appealed from the Northern District of Pennsylvania. He also cites *In re Caroni* in 13 Fed. (2d) 954; *In re Laws*, at 59 Fed. Supp. 179; and *In re Balestrieri*, 59 Fed. Supp. 181. The Laws, Balestrieri and Caroni cases, I believe, are all District Court cases from San Francisco.

In the Balestrieri case the petitioner for citizenship was an Italian, then 55, who when he was about 23 had been involved in and convicted of a murder, although apparently he was not the one who actually killed the victim. He was admitted to citizenship by the District Court in San Francisco, which considered the same cases as had been considered in the Gabin case, and came to the same decision about the statute, Section 307 of the Nationality Act, saying it did not limit in point of time the power of the court to examine the petitioner's qualifications for citizenship, and although it found this Mr. Balestrieri qualified for citizen-
[fol. 370] ship, the court regarded itself as being able to go outside the five-year period and consider matters which would bear on the petitioner's fitness, particularly matters of character.

In the Caroni case a petition for citizenship was denied 14 years after he had been convicted of manslaughter and

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after he had been more than 5 years out of jail. That was the situation, in effect, in the McNeil case, where Judge St. Sure denied a petition for citizenship, saying:

> "Even after termination of parole and the expiration of the five-year period, it rests within the sound discretion of the court, dependent upon the facts of each case, whether the gift of citizenship shall be postponed or barred forever."

Now, I don't think there is anything more important to the United States at this time than that our citizens be loyal, that they be attached to the principles of the Constitution, and well disposed to the good order and happiness of this country. Whether or not the petitioner in this case would make a good citizen of the United States and is fit to be a good citizen of the United States is something for the court to decide. I believe that the court may decide, in view of the rules set down in the cases just cited, to base its decision on things which took place outside of the five years in which the minimum requirements of the statute are that the petitioner establish good moral character, attachment, and [fol. 371] favorable disposition, and so forth.

It must be borne in mind, too, that this petitioner filed an earlier petition for citizenship in 1941, not of record in this court; that the government proposed to recommend against his petition at that time, against his being naturalized at that time, and the case was withdrawn on the petitioner's motion, and was never argued. But the petitioner was put on notice at that time as to what the intentions of the government were, and it would be logical for him, well advised, to lay low from the time the question was first raised in 1942, until now in 1947, when he is before the court again, based on the matters set forth in that lecture.

I would like to say, too, about that lecture, it was something not said on the spur of the moment, but it was something that he composed himself, he wrote it out, and he had opportunity to make any amendments he wished to make. He prepared it in advance, and he made copies and gave the lecture, as he said from the stand, just substantially as it was in the written copy. That the holder of those views, as stated in that lecture, was not attached to the principles of the Constitution of the United States, as that attachment is defined in the Saralieff case, is the contention of the govern-

ment, based on the lecture itself, and on the failure of the defendant, or of the petitioner here, to avow in his own behalf from the stand that he had changed his mind about [fol. 372] any of these things, and the fact that even his attorney in argument did not say that he had changed his mind about any of this. The government's position is that he is not attached, and recommends that his petition be denied.

Thank you.

The Court: Are you going to discuss the case, too, Mr. Ganahl?

Mr. Ganahl: I am going to close. I am going to take a very short time.

The Court: Yes. Your associate took an hour and twenty minutes.

CLOSING ARGUMENT ON BEHALF OF PETITIONER

Mr. Ganahl: Mr. Gallagher was, as usual, thorough and complete, and in giving your Honor the various authorities, with which I am sure you are familiar, as to what an alien can or cannot do.

At the close of the last hearing I was impressed by your Honor's suggestion in relation to the Saralieff case, that there must be in your Honor's mind, at least so I thought, that in that case we would find the test as to what attachment meant, and what it meant to be well disposed to the welfare of the United States. So I took that case, and I read it very carefully, and I have no quarrel with it even assuming Mr. Gallagher's position is correct, and that some of the language here is not exactly the law; that is, that a citizen, as the District Judge there states, may advocate changes in [fol. 373] the Constitution, he has that right, but probably an alien does not. I gained that from the decision in certain language that the judge uses.

If we compare the factual set-up in the Saralieff case as against the Wixman case, it simply falls to the ground, because this man Saralieff frankly advocated changes in the Constitution which would mean no more Constitution. That is what it amounted to, and the District Judge pointed that out to him and said,

> "If those are the kind of changes you once wanted and you say you now want, then I can't say that you are attached to the Constitution of the United States."

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That is what he said. The man was a Communist, an avowed Communist. Quite evidently he was openly advocating his views and spreading them quite widely.

That is a different factual situation from what we have here. We are trying to find out here and to show what the attitude of the petitioner was, his good moral character, and as the government has contended, the burden is upon us to show that Wixman is attached to the Constitution of the United States, and well disposed, and so forth, towards the people and the government of this country, and I think we have done that. I think we have done that completely. Now, attachment does not mean that love that a person might [fol. 374] have for his religion. It does not mean that at all. Judge Learned Hand has set it down for us in the Circuit Court of Appeals case, In re Rossler, that Mr. Gallagher quoted from, and he says this:

> "• • • That attachment to the principles of the Constitution which the law exacts at naturalization"—and that is our position here—"is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government; but merely an acceptance of the fundamental political habits and attitudes which here prevail."

Mr. Wixman has done that; preeminently so in the last five years. He has no desire to alter this form of government under which we are operating by force and violence, or otherwise. When he was on the stand, as you will remember, your Honor, the word collectivism came up, and, oh, how these words disturb us at times. The science of semantics should come in here. We use the word "Communism" and then that arouses an emotional reaction within the mind and heart, and we are repelled. We throw it out and refuse to look at it clearly, objectively. What does it actually mean? The government wishes to condemn this man on the basis of one speech, one talk, given before the faculty at the City College back in 1934. And in 1934 in the State of [fol. 375] California, as was testified here by Wixman and it wasn't disputed, there was a great ferment going on on that campus, with the isolation of the pro-Nazis, and the Hand opinion is in a case that is a pro-Nazi case, where a German was admittedly, avowedly in love with Germany, avowedly saying, "This is one folk. We Auslanders now

ought to be together. This is one folk, and we are against all not of German descent." And in that case the learned court said that is not sufficient to show a lack of attachment. That was a denaturalization case and the burden was on the government. But that happened soon after the man had been naturalized, and as the court went on to say, if the statements were made in 1936 in relation to the European situation that no judge would have denied citizenship at that time.

So, coming now to Wixman's talk on the campus, admittedly there was a ferment going on, and I think the court will take judicial notice of the fact that in the State of California we had the EPIC campaign, and the Utopian campaign, and, certainly, the campaign that every New Dealer was a Communist, they called us that, and we felt like Monsignor John Ryan of the Catholic University, who said, "Unless you call me a Red at least once a week, I examine my conscience." There was nothing said in the speech of Mr. Wixman that hasn't been said time and time again by other eminent speakers, professors of economics, and otherwise. Maybe not in that exact language. When I asked Mr. Wixman, "What did you mean by 'collectivism'?" he [fol. 376] said, "A system of co-operation, co-operatives, and those things." Now, is a man not attached to the Constitution if he should advocate those things? Does that mean the destruction of our form of government? Does the Constitution say that we shall have so much per cent per year for corporations and that one who does not advocate that is to be thrown into the outer darkness and considered disloyal? Our form of government does not provide for that. Nor does the Constitution say that the Capitalist is the only thing. Not at all. It provides for private property by implication because no property can be taken from a citizen without due process and without proper compensation. But where in this evidence before this court can it be justly said that Wixman comes anywhere close to the Saralieff case? In the very language of that case itself, after the judge gets through analyzing the case, he says:

> "Citizenship is available for aliens who in good faith, by example, and mental attitude disclose their sincere adherence to the political philosophy of the Constitution."

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I claim that Wixman has done that here. He was a product of our high schools, our common schools, and our universities, both Yale and California. He held up his end in 1918 and swore to defend the Constitution of the United States of America against enemies, both inside and out, donned the [fol. 377] uniform of the Army of the United States, if you please, as a boy of 18. And I remember when I went into service, at that time in the Navy, we had the same sort of situation that he was confronted with in the Army at Yale, where we had a great number of boys and men who were not citizens, and they were told to congregate at a certain place, sign a certain paper in a certain place, and they were sworn in. Why it was not completed at Yale I don't know, but he thought it was. Is that an improbable thought in the mind of a boy of 18 years, serving his country in uniform. Now, the examiner said, "Well, you were only in college during that period?" "Yes." "You didn't go overseas?" "No." Trying to minimize that. Why, in this very war, if you please, my nephew was in the University of California, under the same situation as Mr. Wixman was in 1918. He finished his education, but the war went on, it didn't stop as it did in 1918, and he wound up out in the South Pacific. Was he to be subjected to criticism if the war had ended sooner?

I submit, why not take his service record into consideration, as well as this lecture, to show attachment. Then what do we find here? We find the young man getting married, marrying a citizen of this country, an honorable and estimable young woman. She gave her testimony here, and your Honor has heard her testimony. What do the witnesses say? If there is ever a test really to see what makes [fol. 378] a man go, I say take a look at his family, his home life. One of the witnesses on the stand said that his boy was as American as apple pie. Those are the very words he used. Now, I have never met anyone yet impregnated with the doctrine of Marxism to the extent that he became an advocate of it who wasn't trying to make everyone else an addict too, from his own family on up, and I know whereof I speak. If a man is addicted and if he is a devotee to Communism, he always tries to make converts.

Now, none of these witnesses, not a one of them, the students in particular, said that. We asked them, "Did he ever attempt to talk Communism to you?" "No."

"Did he ask you to go to one of these schools?" "No." None of that, no propagandizing, no attempt to make a convert, no subtle innuendoes, if you please, not a thing of that kind. These witnesses knew him, some of them, from way back in the '20s up to the present time; all of them, with the exception of one, more than the five-year period. A great number of them knew him during his City College days.

It is true that this lecture was given. But, for the life of me, I can't see that that lecture means that the person who gave it is not attached to the principles of the Constitution of the United States of America. I wouldn't have given the lecture, because I do not agree with it. The ideas are not my ideas. But because John Doe over here gave it I wouldn't say he was any less devoted to this country than I [fol. 379] was because I would know I would be making a mistake if I did.

Now, your Honor, in coming to this decision as to whether or not Wixman is attached, I know that you are going to give it that construction which it deserves because it means everything to this young man. You said to him, "Why do you want to become a citizen?" He looked at you more or less in astonishment, as much as to say, "Why do you ask that question?"

"I have no other country," said he. "This is the only country I know." He was nurtured here from the time he was 11 years old. His father was dead. He came here with his mother. Every bit of education he got, he got in this country. If he became inoculated with the virus of something the examiner doesn't like, he got it here. He didn't bring it with him. He got it here in our public schools, he got it in our colleges, he got it in our universities.

Let me call your Honor's attention to another, I think, very significant thing. When Mr. Cruse was on the stand, he was the head of the department, and he said he never directly knew or heard Wixman say anything about Communism. He was asked, "Did you ever call him in and talk to him and remonstrate with him?" "No."

He had some complaints from some students, yes. But here is the head of a department and, mind you, here is a man giving a lecture, true, which the government says shows [fol. 380] that he is a Communist, because that is what they are trying to say, before the faculty of the City College, who were not Communists, who were all good loyal Ameri-

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cans, I take it. The head of that institution, who was not here to testify, didn't say a word to him; the head of his Department didn't say a word; the faculty did not say a word. That was given in 1934, and he continued to teach there for five years more. What kind of a Red was that?

I do not believe that there was anything in the teachings of Mr. Wixman that could be criticized from that point of view. The criticism, if there is any to be given him, is that maybe he was giving too advanced material, suitable for more mature a mind. But, remember the testimony stands uncontradicted even in that regard, that the books that were recommended were to be found—where? In the library of the City College.

The government says yes, we could have brought a lot more witnesses. Why didn't you?

The government says there was a former petition filed. True, there was, and it was dismissed without prejudice, dismissed without prosecution.

The government says that, according to all these other cases he pointed out to us, you have the right to go beyond the five-year period. You do. And if you are going beyond the five-year period, I say go all the way. Go to the date [fol. 381] of his entry into the Armed Service, go to the marriage of this boy, go to the home of this boy, of this young man, and look at his married life. And if that is not a man we would like to have here as a citizen of the United States, then I say to you: take Harry Bridges, who by the very Congress of the United States was declared an undesirable person, admitted to citizenship in the United States of America, and if Bridges is entitled to citizenship, I say Wixman is, too. Let's be fair about this thing. Is it because he is a Jew that they do not like him out here? Was that the reason for it? Mr. Horton got on the witness stand, and I have known Mr. Horton for years, have worked with him in the Legion, and what did he say? I really thought he was going to say something. He said nothing that was derogatory of Wixman. He said, "Yes, I stopped in front of his house one time in 1939, and I heard them playing the Internationale." The reason I asked him the question to give us the tune or to sing it was because I had in the back of my mind, although I wasn't sure, but, as I remember it, there is some of the air of the Marseillaise in it; to my mind, at least.

But suppose they did sing it or play it. Mrs. Wixman said that wasn't true, and Mr. Wixman did, too. But even assume it had been true. Is that a crime? Does that show he is not attached to the principles of the Constitution of the United States? I believe I know "America" and "God Save The King," and that they are one and the same tune. [fol. 382] I suppose if, God forbid, we were ever in trouble with Great Britain, and someone would play that, they would say, "Oh, he is subversive. He plays that filthy English tune." That thing is ridiculous to bring into court. One other thing that Mr. Horton testified to was a meeting at City College, and he was there, and Mr. Wixman introduced, just think of it, a Mr. Petal. I don't know who Mr. Petal is. He didn't tell us who he was, but he intimated he was a deep-dyed villain of some kind, or some kind of Red, and he said, "Lo and behold, it was Mr. Wixman who introduced him." And Mr. Wixman said that he didn't introduce him. I said, "Did you invite him to come there?" And he said, "No." But there he was at City College. I don't know who he is. The government may. But if we are to be condemned sometimes for our associations, then I say by the same token Mr. Wixman must be commended for his associations, because forty of them have been witnesses in this court, men of high and low degree, in between, workmen, professional men, judges of the Superior Court and the Municipal Court, ex-judges; as I say, men of high degree and low degree. They came here and said, "Yes, in our opinion, your Honor, he will make a good citizen of the United States." They are the ones who have observed him over the years. Do you think for a minute that if he was tainted with disloyalty that you could get seven American Legionnaires to come here and testify to that, or get these [fol. 383] Jewish War Veterans to testify, or Rabbi Cohen or Jake Lieberman to testify to that? Why, the doctrines of Communism and disloyalty are anathema to the B'Nai B'Rith.

Some statement was made here about his saying something about indulgences. Assume that that statement was made. Why is it injected in here? Why is it thrown in here? Suppose I believed that indulgences might be a bad thing, for the sake of argument, would that make me not attached to the principles of the Constitution of the United States? There are millions of my fellow citizens that feel

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that way about it, who are non-Catholic and who know nothing about it, don't like it. Are they any less attached to the principles of the Constitution of the United States? There are millions who do say, "Yes, I want an indulgence. It is necessary to me, and I hope I can obtain it." Are they any less attached to the principles of the United States Constitution or contrary to its happiness and well-being? Why do they inject those things here, if it isn't to bring in that degree of prejudice and attempt to affect your Honor's mind. They say that here is a man that should not be admitted to citizenship. I think under Judge Learned Hand's decision as to what attachment really is, and I think under the very case your Honor gives us, and I think under the cases quoted to you here by Mr. Gallagher as to what an alien can or cannot do, we have shown that, first, within [fol. 384] the last five years, the minimum period, he has been attached to the principles of the United States and has the well-being of the United States at heart, and should become a citizen of the United States. I think, secondly, that nothing he has done as a teacher at the City College would lead one to believe that he is a member of the Communist party, that he is a Communist, is a teacher of Marxism or a teacher of any of those doctrines that would preclude him from becoming a citizen, because if we are going to view him in the period prior to the five-year period, then we have to go back and view him in his entirety, take his whole life, look at the whole thing, the things that he did. Mr. Gallagher well said, and I believe it bears repeating: If he didn't think he was a citizen after 1918, in heaven's name why should he go through all of this thing? What would prohibit him, or what would it benefit him? There was no question about him in 1918. Not a bit; not a bit.

So, taking the record as a whole, and viewing it from every angle, I believe your Honor in considering this case will grant that boon to Mr. Wixman that he should have, that he should have with his wife and with his son, so that he can continue to be what he has always been in his own heart and felt and abided by,—a good citizen of the United States.

[fol. 384a] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 385] OPINION OF COURT

The Court: I think some of the observations of counsel for the petitioner have missed the difference between what we might call denaturalization cases, actions for cancellation of a certificate of naturalization,——

Mr. Ganahl: Of course, we understand, your Honor, the burden is on us.

The Court: Now, gentlemen, you will just have to observe decorum from now on. Otherwise I shall have to enforce it, and I do not want to do that. I have been listening to you patiently and very interestedly.

Will you read the beginning of my statement, please?

(The statement was read.)

The Court: —and alien cases where the government is seeking to deport. All of those cases are clearly distinguishable from this naturalization proceeding.

The court has already adverted to the very heavy responsibility that the Supreme Court has imposed upon judges of primary jurisdiction in naturalization cases, and when the expressions of the judges are divorced from the ultimate conclusion in the Schneiderman case, it means just this: that the time for caution and prudence is at the threshold of naturalization; that where time elapses from that incident to a later date, many matters enter into the picture that should preclude the government from canceling a certificate of naturalization or from ordering the deportation of an alien.

[fol. 386] We had occasion in this court many years ago to consider that matter in the Pandit case and determined that, even under the doctrine of estoppel, the government should be estopped from asserting against one who had been admitted to citizenship the right to cancel at a later date because of matters that had occurred in the interval. So that in considering a concrete case, we must consider the case, and not in the abstract. If there were nothing in the case other than the testimony of the professors and students, there might have been an equal balance and it might have been safely concluded that the petitioner had sustained his burden of proof. If there had only been this lecture, which he admitted having delivered, Exhibit 1 in the case, it might be that although this court would have had great difficulty in reaching that conclusion, yet by a stretch

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of liberality of thought I suppose that it could have been said that none of the petitioner's expressions at that time were sufficient to indicate, or, at least, to remove the security of the finding that he is attached to the principles of the Constitution and well disposed to the good order and happiness of the people of the United States. But those matters do not stand alone. They dovetail exactly into one another. The testimony of Professors Cruse and Frankian—Cruse having been the superior, the superintendent of the Department of Social Science in the school, and Frankian having been allied in closely-related tutorship in the school during [fol. 387] the appropriate time—are both clear in so far as inferences to be drawn from them are concerned that the repute of the petitioner on the campus was that he was a collectivist and was advocating that theory of political philosophy. That is corroborated by several of the students. It is true of these witnesses none at this late day remember specific expressions, so as to quote the language either directly or generally, but the attitude that the petitioner manifested generated in their minds the fact that he was not merely teaching these different philosophies of governmental organization or political society, but he was advocating them.

Now, what was the idea that should have prevailed in the mind of an American in those distressful times? Was it one of pessimism and gloom and defeatism, or was it one in which he was seeking to bulwark the constitutional processes that have made this country the place that he desired to live in? His lecture, Exhibit 1, is shot full of just such expressions. There is not a word of hope in this lecture for the government of the United States. It is a picture of gloom, of impending disaster, of certitude of destruction, in so far as the processes of the government of the United States at that time were concerned.

The court has read this lecture through several times, trying to see if there was something there that would indi- [fol. 388] cate that the teacher was not seeking to impress any particular philosophy upon his auditors, but was discussing these matters under the right of academic freedom, which is a right that must be preserved in all forms of democratic education. And there isn't one single syllable in the exhibit that warrants safely that conclusion.

I am not going to take the time to direct attention to all of the lecture, but the opening paragraph and the para-

graph immediately succeeding indicates that the speaker was not merely discussing these matters academically, not engaging in a dissertation which he should have engaged in as an economist and as a teacher of economy, of the various methods of social organization or of political action. That would be his duty. That was what he was employed to do. If he confined himself to that, no one, no court would be justified in saying that he was not attached to the principles of the Constitution or well disposed toward the good order and happiness of the American people. But he said this, after quoting Lincoln's reputed words:

> "If I am permitted to paraphrase Lincoln's answer, I would say that, if some ideas I shall bring out are somewhat unconventional, unorthodox by far, I, too, do not mind them, for I am squarely behind them. I do hope you out there in front they will not jar.
> [fol. 389] "There seems to prevail a mistaken notion that anyone who entertains and expresses—no matter how softly—any thoughts and principles other than those in support of the existing order, is ipso facto unpatriotic. From the outset may I say that the speaker yields to no one in the matter of loyalty to and love for this country, these United States of America. However, the country — have in mind may perhaps be to a degree different from that to which some have been accustomed. The land I have in mind is one which beckoned to me some years ago as the land of opportunity for all, a land of plenty, one, the resources of which were sufficient to wipe out needs, hardships, and poverty for all honestly willing to work; a land in which co-operation and social-mindedness could create all necessities and comforts for all. On the other hand, if disloyal I am so only to a land in which want stalks in the homes and streets of cities and towns, in villages, on farms, on the highways and by-ways. I suffer but little love for a land that sets up upon a pedestal and accords a place of honor to those who are ever ready to brand everyone else an enemy of the country, while themselves fail to show much faith in the Bill of Rights, [fol. 390] in the Constitution, or even in some of the more fundamental laws of humanity, decency and fairness.

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"I am about to offer to you a straight-forward examination of trends of thought that seem to warrant special attention because of their significance in present-day economic life. The ideas to be presented are not elaborately detailed. They are not very statistical. What is intended is simply to analyze and evaluate these ideas."

Let me pause there for a moment and say if that were the case, and if there were nothing else in the context of what follows, there would not be anything there that perhaps would be objectionable, and there certainly would be nothing there that should militate against the attachment, under the law, of one to the principles of the Constitution or the fact that he was well disposed towards the good order and happiness of the people. But let us continue with his words:

"My introductory words assumed the likelihood of differences of opinion in our midst. Any discussion of economic problems leads inevitably into the troubled waters of controversy. The question whether a lecturer, a teacher, or a writer should or should not 'take sides' in a controversial issue is a very mooted one. Personally I believe that one should 'take sides.' [fol. 391] Why? Because I am of the opinion that an honest and careful investigation of economic trends is bound to give the investigator a fairly definite conclusion. The students, the audience, the readers, then, are entitled to know what the conclusion is and the logic on which it is based. Experience in lecturing and writing has proven that this practice of arriving at and stating conclusions is sound. A conclusion definitely formulated challenges the listener or the reader. It forces him into agreement or disagreement with the author, which in itself helps to develop logical argument in support of whatever stand he takes. This, again, results in defense or attack on the part of those who take an opposing stand. And it is out of such clashes of conflicting ideas that there comes that development, that growth which is the very core of knowledge, the very life-blood of education."

Let us go through the lecture and see just what was in the mind of the speaker, whether he was exploiting, or

exposing, or explaining these different philosophies of government, or whether he was working up to a climax which would indicate what he was seeking to do and what the lecture clearly connotes and indicates he was trying to do. I am not going to read it all, because there is a great [fol. 392] deal of it which would fortify the inferences which I am stating, but let us take the reservoir of the lecture. According to counsels' argument, and I agree with it thoroughly, I agree with both of you, the environment was distressful, there was unemployment, people were needy, there were hunger strikes and there were all sorts of disorders caused by the distress of those days. That is the environment under which this speech was made. And was it a conciliatory environment? Was it a pacific environment? Was it one that had a tendency to make the auditors cohesive in support of the government of the United States, under the Constitution, or was it something else? Let us see. On page 4 the following matter appears:

> "Even if we assume that a capitalist revival could be stimulated and affected by inflation and deflation schemes, by public construction schemes, or by what-have-you schemes, it would still have in it the inescapable capitalist tendency to generate a renewed depression. For the root fault of capitalism is 'it leads, as soon as it becomes prosperous, to a self-destructive mal-distribution of income. The difficulty is not that there is not enough purchasing power to buy the available supply of goods, but that this purchasing power is wrongly distributed—too much to the rich and too little to the general body of wage workers.' In the course [fol. 393] of economic growth, we have had many periods of so-called prosperity. However, the trouble was that the wealth of this mis-named prosperity was not equitably distributed among the millions of our country. Much too much profit went back to build new factories and too little found its way back to the people to buy the products from the factories we already had. This situation was bad both ways. Too much was produced and too little was consumed, in proportion as the margin between the value of goods produced and the value of goods consumed widened. As a result too great a share of prosperity went to too few people. These few amassed more and more because a person

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with a million dollars does not actually consume very much more than a person with a thousand dollars. After all, even the very, very rich do not buy, let us say, $50.00 worth of ham and eggs for breakfast, which means that a partial solution to the ills besetting us is, to quote even General Hugh Johnson 'to find a way to let everybody have half a dollar's worth of ham and eggs.' A boom under capitalism, which does not generate a new depression is impossible, since it is the inherent capitalist tendencies and contradictions that lead unavoidably to the logical slumps. The [fol. 394] economic history and record of the economic growth of any and of all the industrially developed states proved this beyond a shadow of doubt. Capitalism, then, under those circumstances fails to provide the essentials for the system which it hopes will keep it alive."

Then he reviews a little further the evolution of the so-called trends in the economic picture, and then proceeds as follows, on page 5:

"This picture, as painted, is the direct and inescapable result of the logic of events of capitalism of the 19th Century and before. That capitalism was, by its very nature, one without a plan. At least not a conscious plan, for whatever planning there may have been in it, was done by a mysterious power—an 'invisible hand,' as Adam Smith called it. Now, it became nothing short of blasphemy to attempt to interfere with the operations of that 'invisible hand,' and as long as it functioned somewhat satisfactorily for some, its workings were not questioned. But today a growing skepticism has put economic faith in Providence at a discount. As a result, for some years past one has been hearing of a strange new economic doctrine—a capitalist planned economic system. The advocates [fol. 395] of this idea are 'those from the capitalist ranks who have become influenced in part by the great growth of trusts and combines and partly by the example of the Five Year Plans elsewhere. Both, they say, have established an ordered system of production.'

"But capitalist planning is highly paradoxical, because planning involves the elimination of private

> enterprise and competition in the matter of kinds of goods produced, price to be charged, the share that is to go to the producer, the amount to be set aside for capital accumulation, and so forth. Now, are not the eliminated elements of private enterprise and competition the very props of capitalism, which if knocked from under would carry with them the system itself? And as long as industries are to be carried on with private profit as the incentive for production, the state will be compelled to guarantee the capitalist's profits, if it undertakes to direct its business for him. This in itself will destroy the incentive for efficient production, will tend to disrupt the capitalist system. In the end it will be exposed to the same dangers which face it today—unless it can 'reconcile itself to altering the distribution of income drastically in favor of the wage-earning class. If it fails to do so, it will go down [fol. 396] before the sheer weight of the poverty-stricken. If it does distribute incomes more equitably, the wage-earning class, given added power through augmented income, will insist on taking over the control of the economic system for itself.' State capitalism under those contradictions will find itself between the proverbial Scylla and Charybdis, between wrack and ruin. We cannot, consequently, build up much of a case for state capitalism."

Up to that time he has not uttered one word of hope or of optimism. He has held out the picture of gloom, of destruction and disaster; that it makes little difference how the processes under the Constitution shall be invoked or employed, it is a case of utter disaster. Is that the sort of a picture that should be presented by a teacher of the youth of America during a time of travail and distress? Shouldn't there be some note of hope, of optimism, of encouragement, of steadfast adherence to the processes under which we live and under which a country has been built,—under which it was living at that time and endeavoring to work out, and did work out? It seems to me there cannot be any answer to that excepting that one who holds up that sort of a picture cannot be said to be well disposed towards the good order and happiness of the American people. That is not all, however. The lecture goes on to develop the evolution

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[fol. 397] in the mind of the speaker as to what is to be expected and what will ensue, and he states as follows:

> "With state capitalism out of the picture, what then is to take its place? Mann suggests that the answer lies in one of two contending, underlying philosophies, which, thrown into the arena of today, are fighting for acceptance. These two underlying philosophies are, individualism and collectivism, which in their latest form we may designate as Fascism and Socialism respectively. Interested as we are in today primarily, let us take the newest arrivals into the laboratory and investigate the make-up and potentialities and promises of each."

Then he proceeds to define and discuss Fascism, and after having done so, and having discussed also the operation of big business and of the corporate state, he proceeds thus on page 7:

> "What on the other hand is the antagonist of Fascism? The collectivist state, according to its proponents, in brief, proposes that, 'all resources, all land and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication, should be, not private property but the common property of all those who work.' It further proposes that society should consist only of those who [fol. 398] work, which means that all members of society should be socially useful human beings . . . that production be made to serve the needs of those who work, rather than to serve the needs of a few parasites . . . that production and distribution of goods be planned scientifically to avoid anything resembling the crises of capitalist society, that the society established be intent on developing the machine technique, mass production, and a minute division of labor to the fullest possible extent . . .'
>
> "But how is mankind to reach this state of practical idealism? The collectivist believes that it is necessary for society to go through four stages of development in the path from capitalism to socialism.
>
> "First of all, there must be the stage of bourgeois capitalism, which is characterized by private property, free enterprise and competition. This state of being,

because of its inner defects and contradictions, must give way to another, 'the change to be expedited and effected by the strong, determined, class-conscious part of the working class—all workers or producers, or those laboring by brain or brawn—when a favorable [fol. 399] opportunity presents itself.

"This achieved, there is to follow the second stage —'the dictatorship of the masses.' Realizing that since not all the workers are capable in managing government in industry, there must be an intelligent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals.

"The second stage is to give way to the socialist society—the third phase of collectivism. During this, 'all means of production will be in the hands of the democratically governed state. The masses of workers will now be in control. Wages will still be paid on the basis of efficiency or productivity, with some prevailing differences in wages as a result.' Since there will still be considerable centralization of economic and political control, unless all vestiges of class opposition have been eliminated, this third stage is very much akin to state socialism.

"The last and final phase of this societal change will be the collectivist society—the ultimate goal. This time, coercive authority will have disappeared, everyone voluntarily participating in the co-operative commonwealth. This will be the real 'classless' society, [fol. 400] with no wage system, no price, no money—a system based upon the principle of 'from each according to his ability, to each according to his need.' Thus, crypt-ly put, will evolve the state known as collectivism, a state which according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefulness, its mission, its place in history of economic growth of mankind. It is man's ultimate goal. It is the panacea for which he has been striving for untold ages. It is his El Dorado, his Promised Land—his ideal which he is to reach here on this earth now, and not 'by and by when you die.'

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Then he continues:

> "In conclusion may I say that the choice we are asked to make lies before us. If an economic system is to be judged on the basis of a worth-while standard of living for every man, woman and child under it, then we must choose accordingly. On that basis I cannot see any hope for economic planning in Italy, Germany, Japan and other such Fascist countries. Nor do I see too much hope for this same economic planning in England, the United States, France and other democratic and pseudo-democratic states. Why? In [fol. 401] all these instances unrestrained capitalism is in the saddle, and economic planning for all is wholly inconsistent with, and impossible under, unchecked capitalism. On the other hand, this study and reflection could lead one to conclude that progress, human well being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization."

If anyone can find any cause for joy, or happiness, or peace and contentment, for good order to any people, in that lecture, I cannot see it.

Mr. Gallagher: I did not get that last, if your Honor please.

The Court: The question is: Has the petitioner changed his attitude, and on that score we have a great deal of negative testimony. We have very reputable and responsible persons. We have social workers that are known to the court for years as the most valuable in that line of endeavor. We have Legionnaries. We have other folk. And all of the testimony with respect to those matters is negative. They have had no opportunity to discern excepting as the petitioner goes and comes in the course of his work, in those social service activities in which he has been engaged and at the school.

[fol. 402] Mr. Wixman was a mature man when he gave this lecture and when he taught the students in the City College. He was no youngster, with the enthusiasm of youth, and the forward-looking aspect that the youth of this country and of every other country have, and have a right to express. He was a mature man of 35, 36, or 37 years of age, teaching the beginners in a college, in the public

school system of this locality. His confreres, his associates there, said that the general impression was that he had these attitudes of collectivism to such an extent that this lecture reflects exactly what his attitude was. The evidence of the students, while there is a conflict in it, at least the evidence of several of them was, and one of them was in the school as late as 1940, that the general impression that he gave in his tutorship was not that of merely discussing these economic theories and philosophies of life, but that he was a protagonist, that he was seeking to inculcate into the minds of the students his ideas concerning the correct organization of social compact, and that instead of it being along the lines of constitutional make-up, that it was along the lines of foreign or alien ideology.

I do not believe that the court could conclude from that array of factual ascertainment either that Mr. Wixman at the time he was a teacher at the City College, or now, has sustained the *burden of proof* which is imposed upon him [fol. 403] in this case in view of the government's objections to his admission, and which would exist anyhow, that he is now attached to the principles of the Constitution of the United States and well disposed towards the good order and happiness of the American people and of the people of the United States.

The question of academic freedom is one of momentous importance. The freedom of choice of scholars, especially those in the upper classes of universities, should be unhampered. The instructor should be a stimulating instructor, as one of the witnesses stated, but he should stimulate adherence to the American principle of life and not to some foreign ideology that is entirely alien to the make-up of the United States.

I think the objections of the government should be sustained and the petition of the applicant should be denied, and it is so ordered.

Mr. Gallagher: We will want to appeal this decision, if your Honor please.

The Court: You may have an exception, gentlemen, to the ruling.

Mr. Gallagher: Exception, please.

The Court: The oral opinion of the court may constitute the findings of fact and conclusions of law, if you are satisfied with that.

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Mr. Ganahl: Very well, your Honor. The oral opinion [fol. 404] will be the findings of fact.

The Court: If that is satisfactory to both sides.

Mr. Ganahl: That is satisfactory.

Mr. Burns: That is satisfactory.

The Court: So ordered. File this exhibit, Mr. Clerk.

[fol. 405] Reporter's Certificate to foregoing transcript omitted in printing.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, ALSO KNOWN AS SAMUEL MORRIS WIXMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, ALSO KNOWN AS SAMUEL MORRIS WIXMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, which was entered on May 4, 1948 (R. 44). A petition for rehearing, properly filed on June 3, 1948, within the time allowed therefor, was denied on June 5, 1948 (R. 45). The Ninth Circuit's judgment affirmed the judgment of the United States District Court for the Southern District of California, Central Division, entered February 7, 1947, denying petitioner's petition for naturalization (R. 26-27). This Court's jurisdiction to grant this, petition rests upon Section 240(a) of the Judicial Code (28 U. S. C. 347(a)).

Opinions Below

The opinion of the District Court (R. 280-290), which was delivered orally and was stipulated by the parties and ordered by the Court to constitute findings of fact and conclusions of law (R. 26, 290-291), is not reported. The opinion of the Circuit Court (R. 38-43) is reported at 167 F. (2d) 808.

Statute Involved

Section 307(a) of the Nationality Act of 1940 (54 Stat. 1142, 8 U. S. C. 707(a)) provides:

> "No person, except as hereinafter provided in this chapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Questions Presented

Whether the Circuit Court erred in upholding the District Court's conclusion that petitioner's beliefs establish a lack of attachment to the principles of the Constitution and of a favorable disposition to the good order and happiness of the United States, within the meaning of the naturalization requirements provided in Section 307(a) of the Nationality Act of 1940.

A. Whether the conclusion that belief in public, collective ownership of industry and other resources, instead of private capitalist ownership, is contrary to

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the principles of the Constitution and to a favorable disposition to the good order and happiness of the United States, constitutes an erroneous interpretation of the statutory requirements.

B. Whether a finding that petitioner believed in a change in the political structure of the United States which was inconsistent with "the principles of the Constitution," would be invalid.

Statement of the Case

Proceedings

Petitioner filed a petition for naturalization under the Nationality Act of 1940 in the United States District Court for the Southern District of California (Central Division) on September 25, 1945 (R. 1-4).[1] After a hearing upon the petition on January 24 and 31, 1947, the District Court sustained the naturalization examiner's objections to petitioner's naturalization, and on February 5, 1947, denied the petition on the ground that petitioner had failed to "establish his burden of proof of attachment to the principles of the Constitution of the United States and a favorable disposition to the good order and happiness of the United States" (R. 26-27).

Facts

Petitioner immigrated to the United States with his mother from Russia in 1911 as a child of eleven (R. 177). While a student at Yale University he voluntarily enlisted and served in the United States Army in World War I (R. 177-178). In 1918, during his Army service, in pursuance of a modified procedure for naturalization offered to

---

[1] The petition was filed under Section 310(a) [8 U.S.C. 710(a)] which reduces the residence requirement to one year's residence in the United States for aliens married to United States citizens. Petitioner was married to a native-born American citizen on June 25, 1927 (R. 1).

members of the armed forces, he engaged in a proceeding which he believed had the effect of conferring naturalization upon him (R. 178-179, 216-217, 219-220), and only found that his citizenship was not recorded when he attempted to comply with an announcement in 1941 at the commencement of World War II advising naturalized citizens to secure copies of naturalization certificates (R. 179, 216, 217, 220-222).

Petitioner has been employed for the most part since his graduation from college as a college instructor in economics.[2]

Economic Views

The major evidence as to petitioner's opinion on economic problems was a lecture delivered by petitioner during the depression, in 1934 or 1935, as an extra-curricular activity at the City College where he was then teaching (R. 190-191). This lecture began with praise of the American way of life and with petitioner's statement of his faith in the possibility of improving economic conditions and ending the then existing unemployment and scarcity in the midst of plenty (R. 5-6). After discussing the desirability of constant evaluation and re-examination of economic theories and trends and the study of new doctrines, rather than dogmatic adherence to any one school of thought (R. 6-8), petitioner described the resources of the United States and the then existing depression (R. 8-13). He then dis-

[2] After graduate work with a concomitant instructorship in history at the University of California (R. 218-219) and a period of employment in religious work (R. 179), petitioner commenced teaching economics and history (R. 186) in 1929 at the Los Angeles Junior College, which thereafter became the Los Angeles City College (R. 179). He served as an Associate Instructor (R. 69) until his resignation in 1940 (R. 180). Since then he has been employed in making studies and surveys for Jewish social organizations, such as the study of personnel relations of Jewish employees which he was conducting at the time of the District Court hearing (R. 184-185). It was indicated that he would lose his employment as a result of the denial of his petition for naturalization (R. 94-95, 149-150, 216, 239).

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cussed various theories of organization of the economy, describing the booms and depressions of unregulated capitalism, the theory of state capitalism, and the basic principles of Fascism (R. 13-20). He enunciated or quoted various criticisms of state capitalism and Fascism (R. 17-20) and then referred to collectivism as the antagonist of Fascism (R. 20). He quoted the proponents of collectivism as proposing that "all resources, all lands and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication should be, not private property but the common property of all those who work" (R. 20-21). After ezplaining the theory of proponents of collectivism as to the stages through which society would pass in the development from capitalism to socialism, petitioner concluded with the statement that "study and reflection could lead one to conclude that progress, human well being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization" (R. 24).

Petitioner explained that he had not believed at the time of the delivery of this lecture that there could be a successful and permanent revival of capitalism. However, as an open-minded and serious observer of economic phenomena (R. 187-188, 207-208, 212), he was thereafter influenced by the adoption of some collectivist measures, such as the formation of producers' and consumers' cooperatives, and cooperative programs during World War II to increase production, and he now inclines to the belief, though he is not certain, that capitalism, with modifications, can and should be preserved (R. 195-196, 205, 206, 209).

Political Viewpoint and Status in the Community

Petitioner had at all times faith and confidence in the Government of the United States, believing it to be the best in the world, though capable of improvement. He has at

all times been opposed to totalitarianism, believing that the American people can and should achieve greater economic well-being through American principles, rather than through the abandonment of them. He has always believed ardently in the Bill of Rights, placing particular value, in part because of his background as an educator, upon the free exchange of ideas (R. 188, 91-92, 94-95, 115-117, 119-121, 126, 133, 148-152, 154, 160-162, 164-166).

The petitioner's witnesses included a number of teachers who had taught at the City College at the time of petitioner's employment there from 1929 to 1940 and all but one of whom were still on the faculty at the time of the hearing (R. 85-86, 112-114, 115-117, 118, 128, 131, 138, 164, 175); neighbors (R. 135, 155, 172, 175); well-established business and professional men in the community (R. 133, 145, 148-149, 160, 162, 175); members and officers of veterans' (R. 81, 81, 122, 175) and teachers' organizations (R. 79, 81, 82, 83-84, 156, 175) to which petitioner belonged; former students (R. 88-89, 140, 168-169); clerics (R. 90, 93); and his wife (R. 233). It is clear from the testimony that petitioner is a public-spirited person who participates in civic, communal and religious organizations, taking an interest in his profession and in educational problems, in current events, and in the welfare of the community (R. 80, 92, 122, 160, 179, 182, 212, 213, 214-216).[3]

Nature of Adverse Testimony

The record is barren of any evidence even tending to suggest that petitioner was a member of the Communist Party or of any organization believing in violent overthrow of the government. The question of affiliation with any such

[3] Petitioner's wife, whom he married in 1927, testified that petitioner had awakened in her a keener appreciation of the American way of life, which she, as a native-born citizen, had previously tended to take as a matter of course (R. 234, 233-235); and he had imported such an appreciation as well as his religious inclination to their son (R. 150, 212, 233-234; as to son, see also R. 81, 94, 161, 173).

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group is entirely outside the issues of this case, and the case rests solely on petitioner's beliefs and opinions.

Despite numerous efforts by the Naturalization Examiner to adduce testimony damaging to petitioner as to his economic or political views, the only testimony of a specific nature that the Government was able to elicit thereon was:

One former student of petitioner testified that petitioner "stressed collectivism" in his classes (R. 56). The witness' support for this view was that petitioner had stated as "a boy, working in a factory, that he worked at one little item all the time. He thought that was the way it should be done, and there was greater success . . . you could succeed faster, and get more work done by everyone working together, and doing a small part (R. 57). Another student maintained that petitioner was "favorable to Communism and Socialism" because he had said that if "a truck (was) going down the street with a red flag on back (because) it had a load of pipe or lumber on it, and that the newspapers, particularly the Hearst newspapers, would jump at the conclusion that the truck driver was a dirty Red. This . . . was designed to make the student believe, after all, the word 'Red' was not such a bad word, and maybe we ought to check into it a little bit and make up our own minds" (R. 68).

Other than the students, the two chief witnesses against petitioner were Professor Cruse, the head of the department in which petitioner had taught at the City College, and Professor Frankian, a fellow-instructor. Neither, however, had any actual knowledge of petitioner's beliefs. The most positive statement adverse to petitioner by Professor Cruse was elicited when the Naturalization Examiner finally resorted to a blanket question as to "Communism," as follows:

> "Q. As to Mr. Wixman's views about Communism, were they favorable or unfavorable, as you remember them? A. As a general principle I felt that Mr. Wix-

man rather favored the ideology of Communism.

Q. Is there anything that you can recall that led you to feel that? A. There is nothing other than the general opinion you get from discussing the subject with any individual." (R. 70)

But Professor Cruse admitted that in fact he knew "not at all what the political faith of Mr. Wixman is" (R. 72), and that, though he had attended some of petitioner's classes unannounced, he was unable to maintain that petitioner had espoused any particular view in his classes (R. 69-70, 72).[4]

As to Professor Frankian, all that could be elicited from him as to petitioner's views was:

"Q. Did you ever have any conversation with Mr. Wixman which involved political economic questions? A. No, not that I recall.

Q. Specifically, did you ever discuss the subject of Communism? A. No.

Q. Did anyone else ever discuss Mr. Wixman with you? A. I have had a number of students complain about him . . . It was common belief on the campus by a great many students that he was a Red. . . .

The Court: Upon what do you base that deduction you have, Professor?

The Witness: Your Honor, when they come and say, 'Well, we heard another lecture on Communism',—they might have been exaggerating, I don't know, but I am of the belief that where there is smoke there is fire. It was not from one person. It was a number of persons. If you should ask me who those people are I could not recall names ten or twelve years later, but that was my direct impression" (R. 97-98).[5]

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[4] And Mr. Cruse's statement that his and petitioner's views were out of harmony in general (R. 70) and on the question of teaching methods in particular (R. 72), is relevant in considering his possible bias against the petitioner.

[5] Although the District Court did not deem Communism even to bear on the issues of this case, the background of the use of this term in this testimony may be briefly noted: During the '30s and particularly during the depression years, there were "conservative" and "liberal" groups among both the students and faculty at the College; and the latter group

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However, this selected group of students (R. 98, 99-100) had been unable to give Professor Frankian any specific illustrations of petitioner's classroom statements that they could "get" petitioner "on" (R. 103). The same apparently was true of an American Legion investigator who had student informers (R. 106-108) and of two of the Government's student-witnesses (R. 63-64, 54-55).

Professors and students appearing for petitioner, and petitioner himself, testified that in his classes he gave a factual description of all economic theories and systems to enable the students to achieve a rounded and open-minded approach to economic questions (R. 117-118, 142-144, 169-172, 181, 187-189, 222).

The District Court's Findings of Fact, Conclusions of Law, and Opinion

With agreement of the parties, the District Court directed that its opinion constitute the findings of fact and conclusions of law (R. 26).

A large part of the opinion consisted of a reading of passages of the petitioner's lecture without any statement as to inferences to be drawn therefrom or any other comment. A reading of the passages of the lecture upon which the Court did comment in conjunction with such comments, makes it clear that its major finding of fact was:

> On the basis of the testimony of Professors Cruse and Frankian, and of those of petitioner's former students testifying against him, and on the basis of the lecture delivered by petitioner in 1934 or 1935, the Court found

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included petitioner. The "liberal" instructors, despite their inclusion of ardent anti-Communists, and despite the fact that their employment has survived continuing investigations of radical activity at the College (R. 106), were indiscriminately referred to as "Communists" by their opponents (R. 117, 120, 114, 164). It is also to be observed that the student body was less mature than that of colleges generally, since the College only included the freshman and sophomore years and the entrance requirements were relatively low (R. 76, 167).

> that during the period to which the testimony and lecture related, petitioner believed in "collectivism"; that is, the public or communal ownership and direction of industry and other resources,—and did not believe in private ownership and direction of industry by capitalists (R. 280-281, 284, 286, 290).

The Court further found that petitioner had not established that he had changed his attitude from that which he possessed at the time of his lecture, and that he was to be deemed to possess this attitude during the period in which attachment was required under the naturalization statute (R. 289).

The Court's conclusions of law were that a belief in "collectivism" is not consistent with the principles of the Constitution and a favorable disposition to the good order and happiness of the United States, and that because of petitioner's belief in "collectivism" he had not sustained his burden of proving attachment to the principles of the Constitution and a favorable disposition to the good order and happiness of the people of the United States (R. 280-281, 290).

Thus, the Court quoted petitioner's statements as to the inevitability of depressions under capitalist ownership and direction of industry; on the basis thereof, it stated its opinion that "he (the petitioner) has held out the picture of gloom . . . that it makes little difference how the processes under the Constitution shall be invoked or employed, it is a case of utter disaster . . . Shouldn't there be some note of . . . optimism . . . of steadfast adherence to the processes under which we live . . . one who holds up that sort of picture cannot be said to be well disposed toward the good order and happiness of the American people" (R. 286). Similarly, such criticism of capitalism, the District Judge indicated, showed a tendency not

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to "support . . . the government of the United States, under the Constitution" (R. 284).[6]

* * * * * * *

It is doubtful that the Court intended to find, as a basis for its judgment, that petitioner believed in the views discussed in those passages of his lecture which the Court merely read, without comment, in the course of the opinion (see further discussion in Brief, *infra*, p. 28). However, for the sake of a complete recital of all the findings which might possibly be inferred from the opinion, it is to be noted that the District Judge read in the course of it the passage of the lecture respecting the theory of the stages through which society would pass in a transition from capitalism to socialism (R. 287-288). The change from capitalism, according to the quoted theory, was to be commenced by the action of all workers and producers, whether manual or intellectual, acting as a class; society was then to go through a stage wherein there was a central governing body selected from such "workers"; through another where the governmental administration would be diffused into the hands of the "masses of workers"; and finally to the stage where all coercive governmental authority as well as wages, prices, and money was abolished and there was universal voluntary participation in a cooperative commonwealth (R. 287-288).

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[6] These comments underscore the fact that in concluding that petitioner did not fulfill the requirement of attachment because he was a believer in "collectivism" (R. 281, 290), the District Judge's focus was upon the abrogation under "collectivism" of private capitalist ownership and direction of industry. That this was the import of "collectivism" as used by the District Judge in his findings and conclusion is clear also from the District Judge's indication during the testimony of disapproval of petitioner's criticism of the capitalist tendency toward depression (R. 193-196); the thrust of the District Judge's questioning of petitioner and the former's usage therein of the term "collectivism" (R. 222, 224-225, 227-229); and petitioner's usage of the term in his testimony (R. 208-209).

Whether or not the District Judge intended to find that this passage represented petitioner's beliefs, it is indubitable that the major basis for the judgment was the finding that petitioner believed in collective ownership, as hereinabove set forth.

Opinion of the Circuit Court

In the Circuit Court the petitioner argued that the District Court's findings were not adequately supported by the evidence and that the District Court's interpretation of the statutory requirement of attachment was erroneous, particularly in view of the interpretations of that requirement in this Court's decision in *Schneiderman* v. *United States*, 320 U. S. 118. The Circuit Court, affirming the District Court's judgment, stated that the evidence as to attachment was conflicting, that the District Court had the advantage of observation of the witnesses, that petitioner's burden of proof was heavy, and that doubts were to be resolved against him (R. 42-43). The Court rejected petitioner's argument that the *Schneiderman* decision demonstrated the error of the District Court's conclusion as to the content of the principles of the Constitution within the meaning of the naturalization statute; the *Schneiderman* decision, the Circuit Court stated, was not in point because it was rendered in a denaturalization case (R. 43).[7]

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[7] In the opinion the Court mentioned that two points respecting constitutionality, which had been included in petitioner's statement of points on appeal, were without merit; and it elaborated its opinion under Point 3 of the statement, which had read, "The denial of the petition and the judgment thereon by the District Court is not supported by the evidence" (R. 41-43).

The Court also stated, without indicating its relevance, that the District Court was not required to "'find the facts specially'" under Rule 52(a) and 81(a)(2) of the Federal Rules of Civil Procedure, because the proceeding was a naturalization one rather than a civil action (R. 41-42).

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Reasons for Granting the Writ

1. The judgment at bar is based on an erroneous interpretation of the naturalization law's requirement of attachment to the principles of the Constitution and a favorable disposition to the good order and happiness of the United States. That the interpretation herein is contrary to the intent of the statute is, we believe, established by this Court's decision in *Schneiderman v. United States,* 320 U. S. 118; and we submit that the Circuit Court erred gravely in its conclusion that the *Schneiderman* decision is not in point in the instant case on the basis that that decision was rendered in a denaturalization case. While it is of course true that the ruling in the *Schneiderman* case as to the burden of proof in denaturalization proceedings does not apply in naturalization proceedings, the rulings in that case as to the content of the principles of the Constitution appear to be controlling on that question whenever the issue arises of the meaning of the naturalization statute's requirement of attachment to such principles, regardless of the nature of the proceeding. For the content of those principles, within the meaning of the naturalization law's requirement of attachment, seems to be the precise question that was decided, and necessarily decided, in the *Schneiderman* case, since the issue there was whether Schneiderman's denaturalization was warranted because at the time of naturalization he had lacked an attachment to such principles.[8] And we submit that under that decision a belief in social change of as drastic, or even of a more drastic, nature than that

[8] And it is with respect to the interpretation herein of "the principles of the Constitution" that we maintain the *Schneiderman* decision should have been applied; that is, we urge the District Court's error in the light of that decision, not in its finding from the evidence as to the content of petitioner's beliefs, but in its conclusion as to the content of the principles of the Constitution, both determinations being the complementary bases for its ultimate judgment that petitioner's beliefs showed a lack of attachment to such principles.

which petitioner was found to possess, must be held consistent with the principles of the Constitution and cannot, therefore, be deemed to indicate a lack of attachment thereto. It is again to be noted that there is no question here, as there was in the *Schneiderman* case, of membership in the Communist Party or any similar organization, but only of a belief in public and collective ownership of industry and resources in place of private capitalist ownership.

Except in the *Schneiderman* case, this Court has not ruled on the meaning of the requirement of attachment in relation to an alien's belief in economic change. But we submit that such a rigid and circumscribed approach to the "principles of the Constitution" as was taken by the lower courts herein is contrary not only to that decision but to the tenor of this Court's other pronouncements on the underlying theory and purposes of the Constitution: its essential and basic flexibility, the adaptability it envisages to changing economic and social needs, and its primary purpose of creative growth through the free exchange of ideas.

2. There are special factors which lend unusual importance to the question of whether the lower courts' interpretation of the principles of the Constitution involves a failure to follow applicable decisions of this Court. The judicial function in relation to most of the requirements for citizenship is slight since most of them have been set down by Congress in quantitative or other relatively precise terms; that here involved is one of the few which is broadly and qualitatively expressed.[9] Thus it affords one of the chief

[9] See Nationality Act of 1940, Secs. 302 to 327 (8 U.S.C. 702-727). The only other requirements which leave a broad scope for judicial construction are that of a "good moral character" (Nationality Act, sec. 307, 8 U.S.C. 707), and those based on belief in force and violence (Nationality Act, sec. 305, 8 U.S.C. 705); and the latter have only rarely been invoked. By contrast, the annotations to the requirement here in issue show the frequency with which lack of attachment is posed as an objection to petitions for naturalization.

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bases for judicial leeway with respect to grant or denial of citizenship; and if the doctrine and interpretations established by this Court in regard to this requirement are to be ignored, an area for great individual variation and expression of personal predilection is permitted, contrary to the intent of Congress, with respect to the grant or denial of citizenship. In the instant case, for example, the District Judge made no attempt to refer to any precedent or authority, and appeared to consider himself free to implement his personal view as to the desirability of admitting to citizenship an alien of petitioner's beliefs, by interpreting constitutional principle as embodying his own economic viewpoint. And it is to be borne in mind that the right to retain citizenship as against denaturalization, as well as the right to acquire it, may depend on the interpretation of the requirement of attachment to "the principles of the Constitution".

3. The importance of the right, and of the basis upon which it was denied, in the case at bar furnish additional grounds for the grant of certiorari. For a denial of citizenship, particularly to aliens who, like petitioner, are long-time residents with no home or ties other than in the United States,[10] is a grave and serious matter; not only does it involve a refusal of the various perquisites of citizenship, but it also denies the applicant the security which a citizen possesses against the possibility of the "drastic measure" of deportation,[11] which "can be the equivalent of banishment or exile." [12]

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[10] In the case of petitioner the denial is an even greater blow because he for years considered himself a citizen (See Statement of Facts, *supra*, p. 4).

[11] *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10.

[12] *Delgadillo* v. *Carmichael*, 332 U. S. 388, 389. The value of citizenship is further aggrandized by war or the imminence of war when all aliens, and particularly enemy aliens, are customarily subject to special restraints.

Thus, the question here involved of the extent to which thought, speech, and action with respect to economic change can be indulged or must be foregone, in order for an alien to be eligible for citizenship, and in order for a naturalized citizen to be secured in his citizenship, is of obvious concern to the three million aliens and the seven million naturalized citizens in this country, and their families. But the interpretation and application of the requirement here involved is of importance not only to this large segment of the population, but to the whole of the body politic; for an active-minded and alert population with serious concern for methods of resolving social problems would seem to be an essential foundation of our democracy. If attachment to "the principles of the Constitution" is interpreted or applied so as to preclude belief in social change, the political life of our country will be deprived of the addition by naturalization of forward-looking aliens; and vigorous and independent thought will be discouraged on the part both of alien and citizen. And freedom to believe in a change which may at a given time or in the foreseeable future in fact be undesirable and unconstitutional is an inescapable concomitant of bold and exploratory thought. This principle and the necessity for its preservation has been repeatedly recognized by this Court.[13] Thus, it would seem an important responsibility of this Court to establish the area of thought and opinion in which men's minds can function freely without fear of disqualification for, or loss of, citizenship. To this end this Court must distinguish, for the purposes of the naturalization law, between the enduring and intrinsic fundamentals which may be correctly termed "principles of the Constitution," and the non-essential and mutable, so that

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[13] See, for example, *Pennekamp* v. *Florida*, 328 U. S. 331, 346; *Thomas* v. *Collins*, 323 U. S. 516, 529-530; *Martin* v. *Struthers*, 319 U. S. 141, 143.

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belief will not be stultified by the judicial requirement of attachment to the latter. The renowned words of Justice Holmes are again apposite:

> ". . . a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*. It is made for people of fundamentally differing views . . ." Justice Holmes dissenting, in *Lochner* v. *New York*, 198 U. S. 45, 75-76.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, ALSO KNOWN AS SAMUEL MORRIS WIXMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION

Specification of Errors

That the Circuit Court erred in upholding the District Court's conclusion that petitioner's beliefs establish a lack of attachment to the principles of the Constitution and of a favorable disposition to the good order and happiness of the United States, within the meaning of Section 307(a) of the Nationality Act of 1940.

A. That the Circuit Court erred in upholding the District Court's conclusion that a belief in public or collective ownership of industry and other resources, instead of private capitalist ownership, is contrary to such principles and inconsistent with such attachment.

B. That, if a finding be assumed that petitioner believed in a change in the political structure of the United States which was inconsistent with "the principles of the Constitution," such a finding would be clearly erroneous.

Point I

The Circuit Court erred in upholding the District Court's conclusion that petitioner's beliefs establish a lack of attachment to the principles of the Constitution and of a favorable disposition to the good order and happiness of the United States, within the meaning of Section 307(a) of the Nationality Act of 1940.

A. *The Conclusion that a Belief in Public or Collective Ownership Is Inconsistent with the Principles of the Constitution and a Favorable Disposition to the Good Order and Happiness of the United States.*

Assuming arguendo the validity of the District Court's finding that petitioner believed in the public or collective direction and ownership of economic resources, rather than their private capitalist ownership, we submit that the conclusion that this belief was evidence of a lack of attachment to the principles of the Constitution was based on an erroneous interpretation of those principles. Application of the term "finding" to the District Court's ultimate conclusion of lack of attachment, as was done by the Circuit Court, does not of course alter the fact that that determination embodies a conclusion of law, nor alter the duty of the reviewing court to reach its own decision thereon and to reverse the judgment if it deems that conclusion of law erroneous. See *United States* v. *United Gypsum Co.*, 333 U. S. 364, 394; *United States* v. *John J. Felin*, 68 S. Ct. 1238, 1246 (decided by this Court, June 14, 1948).

The Applicability of the Schneiderman Decision and Its Ruling as to Collectivism and the Principles of the Constitution.

The erroneous nature of the lower court's conclusion respecting the principles of the Constitution is, we believe, indisputably established by the *Schneiderman* decision. In that case the question was whether Schneiderman should be denaturalized on the ground that he had at the time of naturalization failed to meet the naturalization requirement of attachment to the principles of the Constitution; the major basis for reversal in the *Schneiderman* case of the lower courts' judgment of denaturalization was this Court's rulings as to the content of the "principles of the Constitution" within the meaning of the naturalization law. While this Court also ruled on the burden of proof with respect to the content of the beliefs of the petitioner for naturalization, and we freely concede that this rule applies only to denaturalization proceedings and not to naturalization, it seems obvious that the meaning of the statutory phrase—the "principles of the Constitution,"—is the same whenever the question of attachment to such principles within the meaning of the naturalization law is in issue, regardless of the nature of the proceeding. But rather than refer solely to the logic of the matter, we can also refer to numerous statements in the *Schneiderman* opinion, showing that the circumstance that the proceeding was for denaturalization was not, and could not have been, a factor in the rulings as to the content of "the principles of the Constitution"; that there is no basis for restricting such rulings on this score; and that the question of the proper interpretation of "the principles" was decided, and necessarily decided, for the purpose of any proceeding in which the statutory requirements for naturalization are in issue.

Thus, the Court said, in introducing its discussion of "the principles of the Constitution":

> "When petitioner was naturalized in 1927 . . . it was to 'be made to appear to the satisfaction of the court' of naturalization that immediately preceding the application, the applicant 'has (been) . . . attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.' Whether petitioner satisfied this . . . requirement is the crucial issue in this case. To apply the statutory requirement of attachment correctly to the proof adduced, it is necessary to ascertain its meaning." (320 U. S. at pp. 132-133)

In then seeking to determine the meaning of the requirement, the Court, after discussing whether the statute created a test of behavior or a test of belief, felt constrained to adopt the latter test because in *United States* v. *Schwimmer*, 279 U. S. 644, and *United States* v. *MacIntosh*, 283 U. S. 605, *both naturalization cases*, "it was held that the statute created a test of belief" (320 U. S. at p. 135). Then, in discussing what beliefs were to be deemed to show lack of attachment to the principles of the Constitution, the Court used this language:

> "Our concern is with what Congress meant to be the area of allowable thought under the statute . . . it is not to be presumed that Congress intended *to offer naturalization* only to those whose political views coincided with those considered best by the founders . . ." (320 U. S. at p. 139; italics added).

Finally, at the end of its delineation of possible beliefs, the Court determined which of these beliefs Congress "intended" to require by "the general test of 'attachment'" (320 U. S. at p. 158).

Thus, considering it incontrovertible that the Circuit Court erred in holding that the *Schneiderman* decision was

not in point because it was in a denaturalization proceeding, we proceed to the question of the ruling in the *Schneiderman* case as to collective or public ownership of resources and the abrogation of capitalist direction and ownership. Schneiderman testified "that he . . . advocated social ownership of the means of production and exchange, with compensation to the owners" (320 U. S. at p. 127). "With regard to the constitutional changes he desired petitioner testified that he believed in the nationalization of the means of production and exchange with compensation" (320 U. S. at p. 141). On this point the Court stated:

> "It is true that the Fifth Amendment protects private property even against taking for public use without compensation. But throughout our history many sincere people whose attachment to the general constitutional scheme cannot be doubted have, for various and even divergent reasons, urged differing degrees of government ownership and control of natural resources, basic means of production, and banks and the media of exchange, either with or without compensation. And something once regarded as a species of private property was abolished without compensating the owners when the institution of slavery was forbidden. Can it be said that the author of the Emancipation Proclamation and the supporters of the Thirteenth Amendment were not attached to the Constitution? We conclude that lack of attachment to the Constitution is not shown on the basis of the changes which petitioner testified he desired in the Constitution" (320 U. S. at p. 141).

It is clear that the Court's conclusion in the above passage that Schneiderman's belief in a change to collective ownership could not be deemed to indicate lack of attachment, was not related to any factor, such as burden of proof, affecting denaturalization, as distinguished from naturalization, proceedings; since the Court is referring to beliefs Schneiderman himself admitted, the ruling was in no way based on a failure of proof as to the content of his belief.

This holding as to the failure to establish lack of attachment was instead based wholly on the complementary question of the content of the "principles of the Constitution" on the question of "nationalization of the agents of production and exchange with or without compensation" (320 U. S. at p. 142).[14]

This Court's view, in the *Schneiderman* case, as to the consistency with the principles of the Constitution of a belief in collective ownership is not an isolated or casually-pronounced position; but rather, it is firmly rooted in the Court's general opinion on the extent to which the Constitution countenances a belief in change in existing institutions. On this issue the Court stated in the *Schneiderman* opinion:

> "Article V contains procedural provisions for constitutional change by amendment without any present limitation whatsoever except that no State may be deprived of equal representation in the Senate without its consent . . . This provision and the many important and far-reaching changes made in the Constitution since 1787 refute the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical change is necessarily not attached to the Constitution . . . As Justice Holmes said, 'Surely it cannot show lack of attachment to the principles of the Constitution that . . . (one) thinks it can be improved' . . . Criticism of, and the sincerity of desires to improve the Constitution should not be judged by conformity to prevailing thought because, 'if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought'." (320 U. S. 137-138)

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[14] And it is to be noted that the dissenting Justices also indicated that collectivization of resources was consistent with "the principles" if compensation was made. (See 320 U. S. at pp. 181, 194.) In the instant case, there is no indication in the findings that petitioner was deemed not to believe in such compensation and the only evidence in the record on this point is that he did (R. 209).

Thus, and this is a view to which the dissenters likewise indicated adherence,[15] the "principles of the Constitution" countenance a belief even in the abrogation of some of its explicit provisions, for one of those very principles is freedom to consider, advocate, and effect changes in the Constitution. It is only the general system of government of the United States, rather than the particulars of the social pattern at any given time, to which the naturalization law requires attachment. This view of the law's requirements was also influential in the holding in *Girouard* v. *United States*, 328 U. S. 61, overruling *United States* v. *Schwimmer*, 279 U. S. 644, and *United States* v. *MacIntosh*, 283 U. S. 605. See also *Baumgartner* v. *United States*, 322 U. S. 665.

The theories of the Constitution which this Court effectuated in interpreting the naturalization law in these cases are woven into the fabric of our law and have been expressed repeatedly both implicitly and explicitly by this Court. Recognition, as in the Schneiderman opinion, of the flexibility of the Constitution and of the importance of preserving its plasticity is so basic and pervasive that we have given currency to the ellipticism that "It is a Constitution we are expounding". For it is an instrument "setting up an enduring framework of government" to serve "for the indefinite future and in all the changing affairs of men" (Stone, C. J., in *United States* v. *Classic* 313 U. S. 299, 316). And as an adjunct and corollary of the philosophy that it is through adaptability that our Constitution and Government can endure, stands the primary premise of the Constitution "that the ultimate good desired is better reached by free trade in ideas . . ." (Holmes, J., dissenting in *Abrams* v. *United States*, 250 U. S. 616, 630).

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[15] See dissenting opinion, 320 U. S. at p. 195.

For "free discussion of the problems of society is a cardinal principle of Americanism . . ."[16]

The doctrine which has consequently evolved of the "preferred position" to be accorded to the freedoms of the First Amendment[17] confirms this Court's view in the *Schneiderman* case that it is the principle of "freedom of thought" which should be "singled out as requiring unqualified attachment" (320 U. S. at p. 144), and attests to the wisdom of the Court's reliance thereon for perspective in defining the various other "principles of the Constitution".[18]

In view of the clarity of the expression in the *Schneiderman* case of this Court's opinion as to collectivism and its

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[16] *Pennekamp* v. *Florida*, 328 U. S. 331, 346, quoted in *United States* v. *Congress of Industrial Organizations*, 68 S. Ct. 1349, 1357, at note 21 (decided by this Court, June 21, 1948).

Thus the authors of the Constitution "chose (by the First Amendment) to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance" (Black, J., in *Martin* v. *Struthers*, 319 U. S. 141, 143). And the "freedom to differ" includes "the right to differ as to things that touch the heart of the existing order." *Board of Education* v. *Barnette*, 319 U. S. 624, 642.

[17] See *Thomas* v. *Collins*, 323 U. S. 516, 529-530, as to the "preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment"; *Saia* v. *New York*, 68 S. Ct. 1148, 1151 (decided by this Court, June 7, 1948), as to the purpose of this Court to "keep the freedoms of the First Amendment in a preferred position." See also *Winters* v. *People of State of New York*, 333 U. S. 507 517, declaring that particular care must be exerted to afford procedural protection when the issue is "entwined with limitations on free expression."

[18] The principle of freedom of thought impelled the Court to draw a distinction in the *Schneiderman* opinion which, like the ruling on collectivism, was ignored in the instant case by the lower courts, between a belief which endorses immediate and specific action and one which leaves "opportunity for general discussion and the calm processes of thought and reason" (*Schneiderman* v. *United States*, 320 U. S. at pp. 517-518). The circumstance that petitioner's belief in collectivism fits into the latter category, with no indication in the findings that the District Court regarded his belief as calling for an immediate or specific change, is an additional factor indicating the lower courts' error in holding that his belief in collectivism was evidence of a lack of attachment.

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firm doctrinal foundation, it seems somewhat presumptuous for us to consider tangential authority establishing that public or collective ownership of resources, rather than private capitalist ownership, is consistent with the principles of the Constitution. But we may point out that the taking of private property for public use is restrained under the Constitution only by the requirements that the taking be a reasonable method of advancing a constitutional objective, and that compensation be paid; though the latter requirement is not, it would appear from the *Schneiderman* opinion, to be deemed an immutable principle of the Constitution. Granted that a general taking of private property with the intention of using it productively, either by the Federal or State governments, would not be a reasonable method of advancing any constitutional objective, and would be unconstitutional, at the present time and in the forseeable future; however, a judge's opinion to this effect at the time of a naturalization hearing cannot, as appears to have happened in the case at bar, be converted into a "principle of the Constitution" which immutably prohibits such a taking for all times and places. For:

> "There must be power in the States and the Nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs . . . we must ever be on our guard, lest we enact our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold." Brandeis, J., dissenting, in *New State Ice Co.* v. *Leibmann*, 285 U. S. 262, 311.[19]

In summary, there is no support for the lower courts' conclusion in the case at bar that a belief in collectivism

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[19] And see the expression given to the same thought by Justice Holmes in the passage quoted *supra*, p. 17; and the recent reference to that passage and to: "The painful experience which resulted from confusing economic dogmas with constituent edicts. . . ." Mr. Justice Frankfurter dissenting in *Winters* v. *People of the State of New York*, 333 U. S. 507, 527.

is contrary to the principles of the Constitution; indeed, this conclusion is antithetical to the basic constitutional principles of growth and freedom, as well as to the square holding in the *Schneiderman* opinion.

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B. *Beliefs Respecting Democracy and Political Structure*

It cannot reasonably be inferred from the District Court's opinion that petitioner was found to possess any belief as to political change. For the sole mention in the opinion of possible changes in the governmental organization of this country, is in the passage which the District Judge read from petitioner's lecture in which is quoted a theory as to the stages which would occur in the development from capitalism to socialism. It seems clear that there was no intention on the part of the District Judge to find that this passage represented petitioner's belief, for he made no comment with respect to it in his opinion nor did he mention it in his examination of petitioner (R. 227-232); rather, the District Judge only emphasized petitioner's economic viewpoint, his belief in collective ownership and his pessimism about prosperity under capitalist ownership and direction of industry (*supra*, pp. 9-11). This omission by the District Judge must be deemed deliberate in view of repeated attempts by the Naturalization Examiner to establish that petitioner believed in change in this country's political structure (see, i.e., questioning quoted on pp. 7-8, *supra*). It would therefore seem that the reading of this passage into the opinion was due merely to the Judge's skimming through the speech, as he delivered the opinion, in order to reach petitioner's concluding sentences which showed his confidence in collectivism.

If, however, contrary to our analysis, this Court takes the view that the District Court may have intended to find

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petitioner believed in political change in addition to economic, we submit that such an interpretation of the findings affords but another ground for reversal of the judgment.

Any finding that petitioner believed in a change in our present form of political organization would require reversal as clearly erroneous, under the standard set forth in *United States* v. *United States Gypsum Co.*, 333 U. S. 364, where this Court stated:

> "Since judicial review of findings of trial courts does not have the statutory or constitutional limitations of findings by administrative agencies or by a jury this Court may reverse findings of fact by a trial court where 'clearly erroneous' . . . A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (333 U. S. at p. 395) [20]

There is not a word of testimony in the record as to any political changes which petitioner desired, and abundant testimony that he believed in the present political organization of this country, in democracy, majority rule, and the Bill of Rights (see pp. 5-6, *supra*).

As to attributing to petitioner a belief in the theory quoted in his lecture respecting possible political stages in the development from capitalism to socialism, it is to be observed that that passage of his lecture was an academic exposition of a theory which at best related to a hypotheti-

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[20] And the reviewing court is better able, and therefore freer, to evaluate the evidence when it is documentary (*Gypsum* case, cited *supra*, at p. 394), which is largely true in the case at bar, and "when the crucial issues involve mixed questions of law and fact" (*Gypsum* case, cited *supra*, at p. 396); (*United States* v. *John J. Felin*, 68 S. Ct. 1238, 1246 (decided by this Court, June 14, 1948), as they do in the instant case.

Since it is at the least uncertain, if not highly unlikely, that the District Court made a finding as to political change, the Circuit Court's general conclusion that the ultimate finding of lack of attachment was supported, cannot be deemed to corroborate a finding of a belief in political change.

cal chain of events to occur in the indefinite future. And with respect to the beliefs possessed after a lapse of years even by the authors of the quotation, its persuasiveness is lessened by the fact that it concerned a prediction merely of steps to occur prior to attaining a desired objective, and thus lacked the degree of conviction which would be presumed to inhere in the espousal of an objective itself.[21] Petitioner was, moreover, an eclectic thinker who was not closely identified with these theorists (R. 6-8, 187-188, 207-208, 212, 158). Thus the inference that petitioner believed, during the 1940's,[22] in the theory quoted in his 1934 or 1935 speech would have scant support.

But assuming this inference, the next question is whether it would furnish a basis for a finding of beliefs inconsistent with the principles of the Constitution or with a favorable disposition to the peace and good order of the United States. We submit that the most reasonable and plausible interpretation of the quoted passage—and thus the interpretation which should be adopted by this Court[23]—is that demo-

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[21] Compare *Swift and Co.* v. *United States*, 196 U. S. 375, 396, quoted in *United States* v. *Griffith*, 334 U. S. 100, 105, where Mr. Justice Holmes expounded the doctrine that the existence of the intent to bring about a forbidden result will be determinative of whether there is a dangerous probability of that result, when the acts in themselves are insufficient to show such a probability.

[22] It was assumed by the Naturalization Examiner (R. 48) that the required period of attachment for petitioner was the year prior to his filing his petition, rather than 5 years, because his petition for naturalization was filed under Section 310-a of the Nationality Act, discussed *supra*, note 1. It may be assumed in view of the District Judge's failure to comment on this point, that he proceeded on the basis of the Examiner's assumption. Petitioner accordingly assumed this interpretation of the statute, on which there appears to be a division of opinion in the lower courts, in its argument before the Circuit Court, and the point was not argued by the respondent. The Circuit Court nevertheless stated it as an obvious fact that the required period of attachment was from September 25, 1940 to February 5, 1947 (R. 40).

[23] See cases cited *supra*, note 20, as to a reviewing court's freedom to construe documentary evidence.

Petitioner was not questioned as to the meaning of this section of his speech.

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cratic processes and majority rule were to prevail throughout the transition from capitalism to socialism.[24] But even if this were only one of several equally reasonable or possible interpretations, we believe there are factors here compelling its adoption. For in view of the testimony as to petitioner's belief in democracy, the candor and lack of evasiveness of petitioner (see, i.e., R. 223-225) and his witnesses, the fact that the District Judge gave no indication of any reason to disbelieve them or of such disbelief on his part, and the absence of any substantial testimony as to petitioner's belief in any political changes (See pp. 6-9, *supra*),—in view of all these factors the District Judge was bound to accord weight to the testimony that petitioner believed in democracy. It was, therefore, incumbent upon him to adopt an interpretation of the quotation in petitioner's lecture, if it was a probable and reasonable one, which was consistent with that testimony, even assuming, *arguendo*, some other interpretation might also be possible. And the duty to give proper and careful weight to the testi-

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[24] Thus, the first stage of "'class-conscious'" action of "'all workers or producers'" to gain power (R. 288-289) does not connote the use of force, since this "class" is, by definition, the majority. As to "'the dictatorship of the masses,'" the quotation itself makes clear that this phrase refers to "control by a class, not a dictatorship in the sense of absolute and total rule by one individual" (*Schneiderman* v. *United States*, at p. 142). For the quotation clearly indicates that this "dictatorship" merely meant that a minority of the workers—who are the majority according to the definition of workers in the preceding paragraph—would "pave the way" to the next stage, which is characterized by the majority directly operating the government (R. 288). In the second stage the minority representing the workers, who are the majority, is to govern to prevent overthrow of the majority and to educate all to socialism. It is clear from the last sentence respecting the third stage that the difference between these stages does not involve the use of force but merely the circumstance of whether the government shall be centralized in the hands of a minority representing the majority or controlled directly by the majority (R. 288). These passages cannot be interpreted as envisaging force and violence except by taking terms such as "dictatorship" out of context. But even force by the majority to maintain itself in power against a rebellious minority is not anti-democratic (*Schneiderman* v. *United States*, at p. 157).

mony is here fraught with more than ordinary solemnity; here a special effort at fairness for the petitioner is required because the question being determined is "entwined with limitations on free expression,"—indeed, with one of the most important purposes of such expression: the "free expression of political views."[25]

In summary, we submit that it cannot reasonably be inferred from the District Judge's opinion that he intended to find that petitioner believed in any change in the political organization of this country; but if a finding is inferred that he believed in political change contrary to the principles of the Constitution, such a finding would be clearly erroneous and the judgment, if deemed in part dependent thereon, should for this additional reason be reversed.

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[25] See *Winters* v. *People of the State of New York*, 333 U. S. 507, 517, 518. In the last-cited passage this Court emphasized the importance of the invalidation of a restraint on the distribution of certain publications stating that though the statute only applied to "vulgar magazines," "the next may call for decision as to the free expression of political views." And see Black, J., dissenting in *Ludecke* v. *Watkins*, 68 S. Ct. 1429, 1439 (decided by this Court, June 21, 1948), stating that "the First Amendment represents this nation's belief that the spread of *political* ideas must not be suppressed" (italics added).

Finally, it is to be noted that however the theory of stages quoted in petitioner's speech be interpreted, it clearly did not call for any immediate action; thus, under the *Schneiderman* opinion it could not in any event be deemed to show a lack of attachment to the principles of the Constitution (320 U. S. at pp. 157-518). Compare *Bridges* v. *California*, 314 U. S. 252, 262-263. And though it is unnecessary for the purposes of the case at bar to press this argument, it is to be observed that if the naturalization law were interpreted so as to prohibit naturalization of those who merely discussed a change without creating "a clear and present danger" of effecting it, a serious question as to the constitutionality of the law would be raised. For if it was so interpreted, the law would force the alien to forego his constitutional right to free speech in order to establish his eligibility for naturalization. Thus conditioning his right raises a constitutional question. Compare *Frost* v. *Railroad Commission of California*, 271 U. S. 583, 594; *Hague* v. *C.I.O.*, 307 U. S. 496, 515; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 110-111. And see Justices Murphy and Rutledge concurring in *Oyama* v. *State of California*, 332 U. S. 633, 664.

C. *Consideration by the Circuit Court of the Question of Statutory Interpretation*

The Circuit Court gave no explicit study in its opinion to the question of the content of the principles of the Constitution and a favorable disposition to the good order and happiness of the United States, within the meaning of the naturalization law, although this question was argued at length in the District Court and in the Circuit Court by both parties, and its determination had unmistakably been a major basis of the District Court's judgment.[26] Though the Circuit Court failed to advert directly to this question, we believe it is clear that the Circuit Court considered this issue and that its affirmance, *sub silentio*, of the District Court's conclusion thereon was based on agreement therewith.

In the first place, it is to be assumed that if the Court had intended to refuse to consider the question which was paramount in the case and had been argued extensively by both parties in both courts, it would have stated clearly its refusal and its reasons therefor. Secondly, it is obviously a logical impossibility to determine that the judgment of a lack of attachment to the principles of the Constitution was not wrong, as the Circuit Court stated (R. 42-43), without consideration of the nature of those principles. Furthermore, the Circuit Court waved aside the authority of the

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[26] As to the argument on this point, see (R. 241, 246-261, 266-267, 272-274; and the Circuit Court briefs which are on file with the Clerk of this Court: Appellant's brief, p. 14 (Specification of Errors), pp. 15-16, 25-36; Appellee's brief, pp. 3, 15-26; Appellant's reply brief, pp. 8-13. The District Court explicitly and pointedly made its view of the requirements of the naturalization law a major basis of its judgment; see i. e., R. 281: "What was the idea that *should* have prevailed . . ."; (R. 286); "Is that the sort of picture that *should* be presented . . . *Shouldn't* there be some note of hope . . . It seems to me there cannot be any answer to that excepting that one who holds up that sort of picture cannot be said to be well disposed . . ." (italics added).

Schneiderman case, only on the basis that it was a denaturalization rather than a naturalization case, thus indicating inferentially that it was considering the sole question upon which the authority of the *Schneiderman* case had been urged: namely, the meaning of the principles of the Constitution.[27]

Finally, there was no justification for a refusal by the Circuit Court to perform its duty of reviewing the District Court's interpretation of the naturalization statute, and such a refusal should not therefore be attributed to it. In a petition for a rehearing, which petitioner sought to assure beyond argument that the Circuit Court duly considered the question of the meaning of the principles of the Constitution, petitioner assumed the possibility, which seemed the most likely one from the opinion, that if indeed the Circuit Court intended to refuse to consider this question, its refusal was based on its construction of petitioner's Statement of Points on Appeal. But a refusal on this basis would have been entirely unjustified; it would involve a contravention of the controlling provision of the Federal Rules of Civil Procedure, would create an inconsistency with other Circuits with respect to the application of that provision, and would constitute such arbitrary and unreasonable action as to constitute a violation of due process of law.[28]

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[27] See appellant's brief, p. 26; reply brief, pp. 8-11.

[28] We believe the question of statutory interpretation is adequately covered by point 3 of the Statement of Points on Appeal, reading, "The denial of the petition and the judgment thereon by the District Court is not supported by the evidence" (R. 32). For it is obviously impossible to determine whether or not evidence supports a judgment of a lack of attachment to the principles of the Constitution without determining what those principles are. But assuming that the question of statutory interpretation was not covered by this Statement, Rule 75(d) of the Federal Rules of Civil Procedure only provides that the appellant shall file a statement of points on appeal if he does not designate the entire record as the record on appeal. Appellant (petitioner here), however, designated the entire record (R. 28). And if the statement is made obligatory in every case despite the limitation in Rule 75 as to when it is required, the purpose of Rule 75 is entirely frustrated. For the assignment of errors was elimi-

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And it is to be noted that respondent never suggested that the question of interpretation be ignored because of the Statement of Points, at no time took any cognizance of the Statement and could not conceivably have been in any way prejudiced thereby. The only other ground for the hypothesized refusal to consider the interpretation of the naturalization law, of which there is the faintest indication in the Circuit Court opinion, is the Court's supposition that the District Court was under no duty to make findings of fact (R. 42). But a refusal for this reason to review the District Court's determination of the question of law is open to the same type of objections as a refusal on the basis of the Statement of Points.[29]

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nated by the Rule, and the Statement was obviously to be substituted therefor to the limited extent that some type of assignment served a useful purpose. If, despite the Rule, a Circuit Court requires a Statement of Points even when the entire record is designated, the result will be to reinstate under another name the procedural entanglement which the Rule sought to eliminate, and to require the Statement without regard for its rationale; for under Rule 75 the purpose of the Statement clearly is to afford protection to the adversary with respect to his designation of additional parts of the record. See Ilsen & Hone, *Federal Appellate Practice as Affected by the Rules of Civil Procedure*, p. 457, printed in Federal Rules of Civil Procedure, 1947 Revised Edition (West Publishing Co.); *Mutual Benefit Health and Accident Ass'n.* v. *Snyder*, 109 F. (2d) 469, 470 (C.C.A. 6, 1940); *Boston & Maine RR.* v. *Jesionowski*, 154 F. (2d) 703 (C.C.A. 1, 1946); *Ashton* v. *Town of Deerfield Beach*, 155 F. (2d) 40, 42 (C.C.A. 5, 1946); *Keeley* v. *Mutual Life Ins. Co. of New York*, 113 F. (2d) 633 (C.C.A. 7, 1940).

There appears to be no doubt that the Federal Rules are controlling and that the Circuit Court rules must be interpreted consistently therewith. See 48 Stat. 1064, 28 U.S.C. 723-b; *Mutual Benefit Health and Accident Ass'n.* v. *Snyder*, cited *supra*. Moreover, the intent of the Circuit's Rules appears to be the same as the Federal Rules, and there are no decisions of the Circuit indicating that it would not consider a question where the entire record has been designated, merely on the basis of the Statement. As pointed out above, respondent was in no way prejudiced by the Statement of Points, and appears to have ignored them. The Court's refusal under these circumstances to consider the paramount question in the case would seem to be an unreasonable ferreting out of an invalid objection in order to avoid the judicial function.

[29] The Circuit Court stated that findings need not be made specially in a naturalization proceeding and then emphasized the terms of the District Court's ultimate finding of lack of attachment. But in a recent well-

In order to construe the Circuit Court's opinion so as to avoid these formidable grounds of attack and for the other reasons stated above, the opinion should be interpreted as expressing concurrence *sub silentio* in the District Court's interpretation of the principles of the Constitution. In any event, in view of all the circumstances as to the status of the case in the Circuit Court,[30] and the fact that the question of interpretation was undoubtedly treated as a paramount one by the parties and the District Court, and in view of the general importance of this question (see Petition, pp. 14-17, *supra*) as well as the necessity in the interests of justice of an expeditious determination of whether the denial of petitioner's right to citizenship, which has already entailed considerable hardship to him, was erroneous,—in view of all these facts, any doubt as to the Circuit Court's consideration of the interpretation of the principles of the Constitution can hardly be deemed to affect this Court's reviewing function.[31]

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reasoned opinion, the Seventh Circuit has held that findings of fact are required by the Federal Rules in a naturalization proceeding. *In re Murra*, 166 F. (2d) 605 (1948). In addition to the cases there cited by way of analogy, see *Price* v. *Johnston*, 334 U. S. 266, at 293. In any event, however, the requirement, or lack of it, for findings of fact could hardly bear on the Circuit Court's duty to review the District Court's determination of the question of law. For even if no findings were required, the interpretation of the naturalization law is not to be left to the irreviewable discretion of the District Court.

If the Circuit Court meant to indicate that it did not believe the findings were stated with adequate clarity, it should have remanded for further findings rather than attempt to foreclose petitioner from review of the District Court's statutory interpretation.

[30] Compare *Gryger* v. *Burke*, 68 S. Ct. 1256, 1257, at note 2 (decided by this Court, June 14, 1948), where this Court said that "respondent contested the case below and in this court on the merits. We assume that the Supreme Court of Pennsylvania passed on petitioner's allegations of deprivation of federal Constitutional rights . . ."

[31] Compare *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448, 449, and cases there cited; *Story Parchment Co.* v. *Patterson Parchment Co.*, 282 U. S. 555, 567; *N. Y. Dock Co.* v. *The Poznan*, 274 U. S. 117, 123.

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Conclusion

It is respectfully submitted that the petition for certiorari should be granted and the case remanded with directions to grant petitioner's petition for naturalization, or such other and further relief be granted as to this Court seems proper.

Respectfully submitted,

A. L. Wirin,
Fred Okrand,
Leo Gallagher,
Herbert Ganahl,
Nanette Dembitz,
Counsel for Petitioner.

September 1, 1948.

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, ALSO KNOWN AS
SAMUEL MORRIS WIXMAN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES

A. L. WIRIN,
FRED OKRAND,
LEO GALLAGHER,
HERBERT GANAHL,
NANETTE DEMBITZ,
Counsel for Petitioner.

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Supreme Court of the United States

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We oppose Respondent's suggestion as to the proper disposition of this case, on the following grounds:

1. Assuming *arguendo* the desirability of a remand of the cause to the District Court for its further consideration, the procedure adopted in *Fogel* v. *United States* (cited in Respondent's memorandum, p. 16) is entirely inadequate to meet the needs of the instant case. For we believe it impossible for the District Court to derive sufficient guidance from a short-hand formula such as that

suggested by Respondent (id.). Thus, the expression "economic collectivism" in the suggested formula has not been used by the Courts herein, or by any other Court to our knowledge, and has no fixed or generally accepted meaning which the District Court can be assumed to accept. Further, Respondent assumes that there is a general and well-known standard for categorizing beliefs as "economic" or "political", and its suggestion seems primarily premised on the clarity of this dichotomy; however, the lower Courts herein have indicated no recognition of any such classifications.

It would seem that petitioner's struggle through the Courts, and a grant of the instant petition for certiorari, would be rendered largely useless if the grant only resulted in a re-commencement of the litigation with the correction of the District Court's past errors left to depend on its diligence and ingenuity in ascertaining this Court's intention. It is also to be observed that the guidance to be derived for other naturalization cases from a grant of the instant petition,[1] which is one of the customary purposes and values of a grant of certiorari in such a case, would be almost wholly sacrificed by the procedure Respondent suggests. In short, we do not see that Respondent's partial agreement with petitioner's attack on the judgments herein has abrogated the necessity for this Court's exercise of the adjudicatory function which it would customarily perform in a case of this type.[2]

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[1] See cases cited in Respondent's memorandum (p. 9) in which there have been lower Court holdings similar to that here involved.

[2] See *Marino* v. *Ragen*, 332 U. S. 561, for an example of the many cases, particularly in the field of public law, in which this Court has deemed it appropriate to promulgate opinions although it adopted the result proposed in a confession of error.

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2. As to the group of beliefs which Respondent suggests should be considered by the District Court upon remand and which have been categorized by the litigants as "political", it is peculiarly appropriate for this Court to lay down standards as to this aspect of the case upon the present petition, even if it does not, as suggested in our Petition (and see paragraph 4, infra), make a complete and final determination of petitioner's right to citizenship. It is clear and uncontrovertible on the record that there is a very limited number of "political" beliefs which petitioner could conceivably have held and which could conceivably be deemed to show a lack of attachment to the principles of the Constitution; and there is a precise equivalence of evidence respecting the inference that petitioner held each of these beliefs.[3] Thus, there is no question here of this Court's laying down standards as to speculative matters or hypothetical evidence; but, assuming the remand Respondent requests, we are suggesting merely that this Court state which, if any, of these beliefs could be deemed to show a lack of attachment. Thus a final and correct disposition of the case by the District Court would be insured. In Respondent's memorandum (p. 12) it has designated that one of the possible political beliefs which it considers would show a lack of attachment. Such a statement is not of course binding upon Respondent and thus will be of no aid in clarification of

[3] The only evidence relating directly to petitioner's holding any political beliefs which might conceivably show a lack of attachment was his 1934-5 lecture in which he outlined the theory as to the possible political changes in a transition from capitalism to socialism (Resp. mem., p. 11). No greater emphasis was placed upon one of these possible changes than another, and if the testimony as to petitioner's reputation as a "Red" is to be given any weight, it could not possibly be deemed to show he believed in one of these changes more than another.

the issues or in their expeditious determination if the case is remanded. But Respondent's discussion is noteworthy, we believe, because it illustrates the degree to which this record facilitates the laying down of standards by this Court to guide the District Court upon a remand.[4]

3. We oppose, and urge that we be permitted to be heard upon, Respondent's argument that its suggested order is appropriate in order to give the District Court an opportunity to take further evidence exploratory of petitioner's loyalty (Resp. mem., p. 14). The District Court hearing was not conducted, nor did Respondent limit its evidence nor limit its questioning of petitioner and his witnesses, on the basis of the erroneous view of the statutory standard of attachment thereafter employed by the District Judge. Rather, Respondent energetically and fully developed evidence as to all economic, political, social, and even religious views, and as to all personal, professional, and familial activity, which could possibly show petitioner to be subversive.[5] There is no justification under customary standards of fair procedure for further evidence to be introduced, and a re-opening of the hearing would only unjustifiably postpone the determination of petitioner's right to naturalization.

---

[4] It may be noted that in the well-reasoned opinion in *Stasiukevich* v. *Nicolls*, 168 F. 2d 474 (C. C. A. 1), on which Respondent places much reliance, the Court delivered a detailed analysis of the standards to be used by the District Court upon remand in appraising the evidence.

[5] We shall not again remark on the paltry testimony, mentioned in note 5 of Respondent's memorandum, upon which it partially predicates the assumption that there is room for further investigation of petitioner. We believe a brief perusal of this testimony will establish more expeditiously than analysis of counsel that the investigation already made was unnecessary rather than that its termination is a cause for regret. See the *Stasiukevich* opinion,

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4. We shall not here attempt to argue our view that this Court should direct the grant of naturalization rather than remand this cause for further consideration by the District Court. While we believe that such a direction would be appropriate, our position on this aspect of the case can be elucidated only by a detailed consideration of the findings and the evidence. Because our petition, we submit, discloses that there is a substantial basis for our contention, and because of the importance to the petitioner of avoiding an unnecessary prolongation of the litigation, we urge that our opportunity to present to this Court the argument for a directed grant of naturalization should not be foreclosed by the type of order suggested by Respondent.

Dated: December 2, 1948.

Respectfully submitted,

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FRED OKRAND,
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HERBERT GANAHL,
NANETTE DEMBITZ,
Counsel for Petitioner.

---

stating that reports of an alien's reputation as a "Communist" is "hearsay of a particularly unreliable sort" (168 F. 2d at p. 479). As to the reference to petitioner's membership in the "League Against War and Fascism" (Resp. mem., note 5), it seems to us the grossest example of reliance on "guilt by association" to even refer to such membership in a case such as the instant one where petitioner's questioning extends over 56 record pages, where precise documentary evidence of his beliefs was introduced, and where 39 other witnesses appeared.

With respect to the precision and amount of evidence describing the alien's beliefs, there is no analogy between this case and *Stasiukevich*.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, ALSO KNOWN AS SAMUEL MORRIS WIXMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 38–43) is reported at 167 F. 2d 808. The oral opinion of the district court (R. 280–290), which constitutes its findings of fact and conclusions of law (R. 26, 290–291), is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 4, 1948 (R. 44) and a petition for rehearing was denied on June 5, 1948 (R. 45). The petition for a writ of certiorari was filed on September 4, 1948. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a belief in the substitution of collectivism for capitalism in this country indicates a lack of attachment to the principles of the Constitution or an unfavorable disposition to the good order and happiness of the United States.

2. Whether the petitioner has borne the burden of proving his eligibility to citizenship by showing that he is attached to the principles of the Constitution and well disposed to the good order and happiness of the United States.

STATUTE INVOLVED

Section 307 (a) of the Nationality Act of 1940 (54 Stat. 1137, 1142, 8 U. S. C. 707 (a)) provides:

> (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the

good order and happiness of the United States.

STATEMENT

Petitioner filed a petition for naturalization on September 25, 1945 (R. 3–4). At the hearing before the United States District Court for the Southern District of California on January 24 and 31, 1947, the Government opposed the application on the ground that petitioner was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States (R. 47–48). The evidence adduced at the hearing may be summarized as follows:

Petitioner was born in Russia in 1900 and was brought to this country by his mother in 1911. He attended public schools in New Haven, Connecticut, and in 1917 he entered Yale University (R. 177). While a student there, he served for several months as a member of the armed forces of this country at the army station on the Yale Campus, and received an honorable discharge (R. 177–178). After obtaining a degree from Yale in 1923, petitioner engaged in graduate study and taught history at the University of California (R. 178–179). He thereafter worked with a religious organization in San Francisco until 1929 (R. 179). During the following twelve years, he was an instructor in history and economics at the Los Angeles

Junior College (R. 179).[1] Since 1941, he has been employed in making studies and surveys for Jewish social organizations (R. 184). His wife and son are native-born citizens (R. 1, 234).

Petitioner testified that throughout the period from 1918 to 1941, he thought he was a citizen of this country by virtue of having participated, while in the army, in a proceeding which he was informed and believed conferred citizenship upon aliens who were serving in the armed forces (R. 179, 215). During that period, he was a registered voter (R. 213). In attempting to obtain a certificate of naturalization in 1941, he discovered that there was no record of any decree conferring citizenship upon him (R. 179).

One witness testified that at a meeting of teachers in 1934 or 1935, at which several state legislators were present, petitioner stated that "he was going to teach Marxism at the Junior College" (R. 50). The head of the department in which petitioner taught stated that it was his general opinion, gained from discussions of political and economic conditions with petitioner, that the latter "rather favored the ideology of Communism" (R. 70). A fellow instructor testified that many students at the college considered petitioner a "Red" (R. 73, 97–98, 104), that he was not merely discussing the various ideologies, but that the students sensed "that he was advocating or preach-

[1] Known during the latter portion of his tenure as Los Angeles City College (R. 179).

ing that particular type, finding the good points about it in contrast with our own" (R. 103). Several former students of petitioner during the 1930's testified that petitioner had expressed opinions and made references which were favorable to collectivism or communism and relatively unfavorable to capitalism (R. 56, 66). A former student testified that petitioner "mentioned that he was attending some kind of an evening school which taught communism, and he invited any who wished to attend to come along with him" (R. 61).

In 1934 or 1935, petitioner delivered a lecture on the campus to an audience composed of faculty members, students and others. In this lecture (R. 5–25), entitled "Economic Trends," petitioner discussed the maladjustments and inequities of unrestrained capitalism as shown by statistics on unemployment, inadequate housing, and lack of educational facilities in this country. He pointed out that capitalism had within it an inescapable tendency to generate depressions (R. 13–16). He examined alternative forms of economic organization, including state capitalism, fascism and, finally, collectivism. Quoting from an unidentified source, he said that proponents of the collectivist state propose that " 'all resources, all lands and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication should be, not private property but the common property of all those who work' "; that " 'society should consist only

of those who work, which means that all members of society should be socially useful human beings * * * that production be made to serve the needs of those who work, rather than to serve the needs of a few parasites' " (R. 20–21). Petitioner then adverted to the collectivist belief that bourgeois capitalism must be succeeded by " 'the dictatorship of the masses,' " " 'the change to be expedited and effected by the strong, determined, class-conscious part of the working class—' all workers or producers, or those laboring by brain or brawn—when a favorable opportunity presents itself" (R. 21). Since not all workers are capable in managing government and industry, there must be, during this second stage of the dictatorship of the masses, "an intelligent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals" (R. 21–22). Finally, the third phase of collectivism—the socialist society—will emerge, in which " 'all means of production will be in the hands of the democratically governed state. The masses of workers will now be in control.' " As the final phase, petitioner said, there "will evolve the state known as Collectivism, a state which according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefulness, its mission, its place in history of economic growth of mankind" (R. 22).

Petitioner concluded the lecture by saying that he saw no hope for the fascist economy in Germany, Italy, and Japan and little hope for economic planning in England, France, the United States, "and other democratic and pseudo-democratic states." He stated that "the choice we are asked to make lies before us," and that "this study and reflection could lead one to conclude that progress, human well-being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization." (R. 23–24.)

The Government[1] introduced no testimony relating directly to petitioner's beliefs or behavior after 1940.[2] Former colleagues and students, neighbors, professional and business acquaintances, and members of veterans' organizations whose contacts with petitioner extended over many years testified in his behalf and vouched for his attachment to the principles of the Constitution (*e. g.*, R. 84, 91–92, 94, 115–118, 122, 149–154). Petitioner testified that he believed in governmental control of the means of production if it should be necessary to assure the greatest good for the greatest number (R. 225). He stated,

[2] Government counsel attributed the Government's inability to find witnesses who could testify as to anything petitioner had done or said during the five years preceding his application to the fact that petitioner's present position involved much travel and "he has not been in a position where he was expressing his views as he was as a teacher and as a lecturer" (R. 269).

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however, that his previous forecast of the doom of capitalism had been modified by the display of economic cooperation during the war and by the growth of producers' and consumers' cooperatives and he is now inclined to believe, although he is not certain, that capitalism with modifications can survive (R. 209).

The district court found that petitioner had not established that he is attached to the principles of the Constitution and well disposed to the good order and happiness of the United States, and, on that ground, denied the petition for naturalization (R. 26–27). The Court of Appeals for the Ninth Circuit held that this finding was supported by substantial evidence and affirmed the judgment (R. 38–43).

DISCUSSION

1. The opinion of the trial judge, which was affirmed by the Court of Appeals without discussion of the meaning of the statutory conditions upon naturalization, appears to be based on the theory that a belief in collectivism and a pessimistic attitude as to the survival of capitalism is inconsistent with attachment to the principles of the Constitution and a favorable disposition to the good order and happiness of the United States (R. 281, 286). If the petitioner's belief in the public ownership of the means of production (R. 208), his onetime view that capitalism could not survive (R. 209), and his present view

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that private ownership of property must give way to "the greatest good for the greatest number" (*ibid.*) are in no way inconsistent with the requirements of the Nationality Act (*supra*, pp. 2–3), the judgments of the courts below must be reversed whether or not there might be other grounds on which those judgments might be supportable. This is so because there are no separate findings of subsidiary fact, untainted by the view that a belief in collectivism without more is inconsistent with the statutory standards, upon which the judgments below might rest.

We agree with petitioner that an erroneous standard of law was applied by the naturalization court in making the finding of ultimate "fact." Cf. *Baumgartner* v. *United States*, 322 U. S. 665, 671. Although the view that a belief in the desirability of abolishing the institution of private property and substituting therefor a system of communal ownership is incompatible with the fundamental principles of the Constitution has found support in several decisions (*In re Saralieff*, 59 F. 2d 436 (E. D. Mo.); *In re Van Laeken*, 22 F. Supp. 145 (N. D. Calif.); *Ex parte Sauer*, 81 Fed. 355 (Tex.); cf. *United States* v. *Tapolcsanyi*, 40 F. 2d 255 (C. C. A. 3); *In re MacKay*, 71 F. Supp. 397 (N. D. Ind.)), we think this Court has clearly held to the contrary in *Schneiderman* v. *United States*, 320 U. S. 118. While that case involved a judgment of denaturalization, the Court's ruling seems inconsistent with the

view that the Nationality Act denies citizenship to those who believe in the substitution of collective ownership of the means of production for a capitalistic or free enterprise economy:

> * * * It is true that the Fifth Amendment protects private property, even against taking for public use without compensation. But throughout our history many sincere people whose attachment to the general constitutional scheme cannot be doubted have, for various and even divergent reasons, urged differing degrees of governmental ownership and control of natural resources, basic means of production, and banks and the media of exchange, either with or without compensation. And something once regarded as a species of private property was abolished without compensating the owners when the institution of slavery was forbidden.

Schneiderman v. *United States, supra,* at 141.

Although the principles of the Constitution to which an applicant for naturalization must be attached have not been fully delineated, we are satisfied, in the light of the *Schneiderman* decision, that a belief in the substitution of collective ownership of property for private capitalist ownership and control is within the permissible area of thought which is not a barrier to naturalization. The statutory conditions on admission to citizenship here involved "should be construed, not in opposition to, but in accord with, the theory and

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practice of our Government in relation to freedom of conscience." Chief Justice Hughes, dissenting, in *United States* v. *Macintosh*, 283 U. S. 605, 635, overruled in *Girouard* v. *United States*, 328 U. S. 61, 69. We agree with petitioner that the judgments below should not stand.

2. The problem of the order appropriately to be entered by this Court remains. Bearing in mind that in a case such as this—one arising out of an application for naturalization—the intensity of the applicant's attachment to constitutional principles should be closely scrutinized before citizenship is granted (*Baumgartner* v. *United States*, 322 U. S. 665, 675), and doubts resolved in favor of the United States (*United States* v. *Manzi*, 276 U. S. 463, 467), the Government is constrained to withhold its agreement with the petitioner's view that this Court should direct the entry of a judgment of naturalization.

It may well be that the district court, in attributing to the petitioner a belief in "collectivism," had in mind not merely an economic theory but the political philosophy which advocates attaining the collectivist society through the dictatorship of a minority of the people. In the course of his lecture, described in the Statement (*supra*, pp. 5–7), petitioner spoke of the collectivist's belief that society must go through four stages of development in the path from capitalism to socialism. The second stage he described as "the dictatorship of the masses," one

in which "there must be an intelligent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals." (R. 21–22.) Thus it may be that the trial court was of the view that petitioner not only believed in, and taught the desirability of, radical changes in our economic structure but also that he believed in political changes of an antidemocratic character. Petitioner's exposition of Marxian doctrine, coupled with his reputation as a Communist, may have led to the drawing of an inference by the court that petitioner subscribed not only to the substantive goal, socialism, but also to the procedure by which the transition from capitalism to socialism would be effected, and thus that he countenanced the repression of the traditional freedoms guaranteed by the Constitution during the stage in which the proletariat would rule "with an iron hand" (R. 21–22). Specifically, the court may have concluded that the sincerity of petitioner's adherence to strictly constitutional methods of change was impeached by his acceptance of the necessity for—and, in view of the overriding *desideratum,* the desirability of—rule by a minority, if not initially, then at a subsequent stage in the transition, and a concomitant suppression of the civil rights of dissidents. And, in our view, such a belief in dictatorship would be inconsistent with attachment to the principles of the Constitution. Accord: *Stasiukevich* v. *Nicolls,* 168 F. 2d 474, 477–478 (C. C. A. 1).

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At the trial, the petitioner apparently disclaimed advocacy of such a dictatorship (R. 204), but the trial judge made no finding on the question. We believe that the question whether a finding of advocacy or belief in dictatorship could be sustained by the evidence, and the further question whether such a finding, if sustained, would support an ultimate finding that petitioner was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the crucial statutory period,[3] should be decided only if and when such subsidiary and ultimate findings are made and not before. Whether or not findings of subsidiary fact are mandatory in naturalization proceedings,[4] it would seem that in a case as fraught with delicate problems as is this and in the light of the course the proceedings already have taken, specific findings of fact would be in the interest of good judicial administration. *Stasiukevich* v. *Nicolls,* 168 F. 2d 474, 478 (C. C. A. 1).

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[3] Although, as the husband of an American citizen, petitioner need show only one year of residence prior to the filing of his petition for naturalization (Section 310 (a) of the Nationality Act of 1940, 54 Stat. 1144, 8 U. S. C. 710 (a)), he is nevertheless required to establish his attachment to the principles of the Constitution for at least five years, and for a longer period if deemed necessary by the naturalization court. Cf. *In re Laws*, 59 F. Supp. 179 (N. D. Calif.); *Petition of Ludecke*, 31 F. Supp. 521 (E. D. Mich.).

[4] Compare the view of the court below (R. 41–42) with *In re Murra*, 166 F. 2d 605 (C. C. A. 7).

A remand to the district court will enable that court to clarify its findings unencumbered by an erroneous view of the statutory conditions which applicants for naturalization must meet. The court would, in addition, be in a position to determine whether, in the light of the correct test, further evidence should be taken for the purpose of either amplifying or explaining the few items presently in the record which, while probably insufficient basis for the denial of naturalization as they stand, are sufficiently suggestive of a belief, by the petitioner, in a dictatorship incompatible with the principles of the Constitution to make further exploration and inquiry advisable.[5] Compare *Stasiukevich* v. *Nicolls,* 168 F. 2d 474,

[5] In addition to the evidence summarized in the statement (*supra*, pp. 3–8) which affords some support for the view that petitioner believed in dictatorial communism as a political philosophy and not merely in democratic "collectivism," note should be taken, for example, of petitioner's admitted membership in "The League Against War and Fascism" (R. 213). An organization with a similar name has been classified by the Attorney General as "Communist" under the powers vested in him by Executive Order 9835, 12 F. R. 1935, dealing with the loyalty of Government employees. See 13 F. R. 6137. Even if the organization mentioned is the same as that listed by the Attorney General, the fact of petitioner's membership, standing alone, "is simply one piece of evidence which may or may not be helpful in arriving at a conclusion" as to his loyalty or disloyalty. See Statement of the President dated November 14, 1947, quoted in 13 F. R. 254. We make mention of his membership only as some support for our view that further exploration into the issue of petitioner's loyalty would seem advisable. See also, note 6, *infra*. Cf. *Stasiukevich* v. *Nicolls*, *supra*, 168 F. 2d at 479–480.

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480, a case raising problems much like those here involved in which the Court of Appeals for the First Circuit remanded the cause not merely for more detailed findings on the existing record but for a retrial.

The trial court may also have based its decision in part upon its impression as to the credibility or incredibility of the testimony of the witnesses, including that of petitioner.[6] The ultimate findings of a naturalization court must often rest upon such imponderable factors, and explicit findings as to the trial judge's belief or disbelief of witnesses, with an explanation of why particular testimony was credited or rejected, would be helpful. As this Court has observed, findings on the question of attachment to constitutional principles and disposition toward the good order and happiness of the Nation may represent "the ultimate judgment on a mass of details involving not merely an assessment of the trustworthiness of witnesses but other appropriate inferences that may be drawn from living testimony which elude print." *Baumgartner* v. *United States,* 322 U. S. at 670. Certainly, "Appellate courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed." (*Price* v. *Johnston,* 334 U. S. 266, 291.)

[6] See R. 205, where petitioner exhibited a somewhat suspicious humility with respect to his knowledge of the Russian situation.

The delay and inconvenience resulting to petitioner from a remand is, in our view, offset by the importance to the Nation of carefully screening applicants for admission to citizenship.

CONCLUSION

For the reasons stated, the Government suggests that a writ of certiorari issue, and that, without further argument (*Fogel* v. *United States*, No. 116, decided November 15, 1948) the judgment of the court below be reversed and the cause remanded to the district court for further proceedings not inconsistent with the view that a belief in economic collectivism in itself is not a barrier to naturalization.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1948.

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, also known as SAMUEL MORRIS WIXMAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE,* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Preliminary Statement

This brief in support of the petition for a writ of certiorari is filed by the American Civil Liberties Union *amicus curiae* because of its concern for the apparent denial of civil rights to the petitioner by reason of the lower court's refusal to grant his petition for naturalization solely because of his economic beliefs and teachings.

As the case is fully stated in the petition for certiorari, we shall omit from this brief any formal statement of the facts, the statute involved, and opinions below, for which reference is made to the petition.

Question Presented

The question presented here is whether the petitioner is attached to the principles of the constitution and well disposed to the good order and happiness of the United States, as required for naturalization under Section 307a of the Nationality Code, in view of his belief that the capitalistic economic system requires some modification in the direction of socialization or collective control of industry.

The courts below held that by reason of such economic views the petitioner failed to fulfill the requirements above stated and denied his petition for naturalization.

POINT I

The courts below erred in finding that the petitioner lacked the requirements for naturalization solely because he favored the economic theories of Socialism or Collectivism.

The District Court found that the petitioner was not attached to the principles of the constitution and not well disposed to the good order and happiness of the United States as required by the naturalization laws because of the views which he had expressed as a teacher of economics in Los Angeles City College. The district judge explained (R. 236) that his decision was based on the text of a lecture which petitioner had delivered before the faculty and students of the college and the testimony of various students and teachers concerning petitioner's reputation as a "Red". The petitioner was questioned at length concerning the lecture (R. 192 *et seq.*) and particularly his exposition of the transition from capitalism to collectivism. The petitioner pointed out (R. 203) that his statement of the development of a collectivist state

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was merely an explanation of the working of the collectivist theory according to its proponents and that petitioner himself did not champion such a theory. He stated (R. 205) that he favored the retention of capitalism with increased "socialization" at various points. Although the petitioner and many of his intimates denied emphatically that he was a Communist, there was testimony from several students and professors at the college that he had the reputation of being a radical. One professor said (R. 97) that there was a wide-spread belief on the campus among the students that he was a "Red". Students testified that he stressed collectivism in his lectures as against individualism (R. 56), that he favored socialism over capitalism (R. 66), that he favored Communism (R. 70) and recommended the reading of Das Kapital by Karl Marx (R. 73).

In every case, however, the foregoing testimony consisted of conclusions formed by the witnesses about the petitioner's beliefs rather than direct reference to expression of such beliefs. Moreover, in describing the petitioner as a "Red" or "Socialist" the witnesses did not define those terms. The unfavorable testimony against the petitioner amounts to little more than a vague belief among some of his students and associates that he was a radical in economic matters.

Counteracting such testimony the petitioner introduced a mass of positive evidence that he was an enthusiastic supporter of the American constitution and way of life, that he was not a Communist, that he subscribed entirely to the constitution, but favored merely modification of the capitalistic system to permit a greater degree of socialization of industry and utilities affected with a public interest. A reading of the entire record shows that the petitioner fully supported the constitution and political system of the United States, that his radicalism is entirely

in the field of economics and is not more radical than economic theories which have been widely espoused in recent years in this country.

The petitioner is no more radical in economics than proponents of the New Deal who recently controlled our government. He is no more radical than the socialists who control the governments of England, France and most other "democracies". He is violently opposed to Communism, Fascism, and a supporter of Democratic government.

It appears, therefore, that the petitioner has been denied naturalization not because he lacks attachment to the constitution as a political framework, or fails in loyalty to the laws and democratic institutions of the United States, but merely because he is or was a "Collectivist," who believes that capitalism cannot be successful without increased socialization of industry.

The petitioner cannot be said to lack attachment to the constitution unless the constitution embodies the economic theories of Adam Smith and permits no other system than the unbridled free enterprise of the 19th Century.

Obviously the constitution does not sanction any particular economic system. It is a political document within which many forms of economics may operate. The constitution is not incompatible with modern socialism and collectivism. It neither sanctions free enterprise nor condemns collective control. It imposes no economic pattern upon the United States.

A disposition toward the good order and happiness of the United States does not require a belief in the efficacy of *laissez faire* economics. To insist that socialism or collectivism are detrimental to the happiness of the United States would be to place a straitjacket upon economic evolution and to ignore the tremendous increase in social

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control of industry which has won popular acceptance in the last few decades.

In excluding the petitioner from naturalization the courts below have fallen into the error of assuming that particular economic views are somehow embodied in the constitution and necessary to the happiness of the United States and have concluded that people holding different views are not desirable as citizens. As this court has pointed out in *Schneiderman* v. *U. S.* (320 U. S. 118), the constitution does not embody any economic theory and it cannot be doubted that many persons are attached to it who favor government ownership and control of basic resources and means of production. The record below is completely barren of any evidence to show that the petitioner is not attached to the principles of the constitution and well disposed to the good order and happiness of the United States as those requirements are popularly understood and previously interpreted by this court.

CONCLUSION

The petition for certiorari should be granted and the case remanded to the court below with directions to grant the petition for naturalization.

Respectfully submitted,

American Civil Liberties Union,
Amicus Curiae.

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Dated: October 13, 1948.

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On petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief for the National Lawyers Guild as Amicus Curiae in Support of the Petition for a Writ of Certiorari.

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Brief for the National Lawyers Guild as Amicus Curiae in Support of the Petition for a Writ of Certiorari.

Preliminary Statement.

The National Lawyers Guild respectfully urges the Court to grant the petition for certiorari which has been filed in this case. This brief is filed pursuant to the consent of the parties.

The petition presents substantial constitutional issues of national importance, affecting the fundamental civil rights of a large number of persons. The specific questions involved relate to the provisions of Section 307(a) of the Nationality Act of 1940 (54 Stat. 1142, 8 U. S. C. 707(a)), which provides:

> "No person . . . shall be naturalized unless such petitioner . . . during all the periods referred to in this subsection has been and still is a person . . .

attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

With respect to the wisdom or constitutionality of the other provisions of this section and other sections of the Nationality Act of 1940 requiring persons to be of certain races or colors, to have resided in the United States for a certain period of time, to be of good moral character and other requirements, we are not here concerned, for there was no finding that petitioner did not come within these provisions. Our concern is with the interpretation given to the meaning of attachment to the principles of the Constitution and to the state of being well disposed to the good order and happiness of the United States, as provided by the naturalization law, by the District Court for the Southern District of California, Central Division, and affirmed by the United States Circuit Court of Appeals for the Ninth Circuit in this case.

The National Lawyers Guild has long been interested in protecting and clarifying the rights of all people. In these turbulent times, it is of utmost importance that the basic principles with respect to citizenship within these United States be clearly understood by all who are citizens, or who seek to become citizens. This is particularly true when such grave and fundamental questions are raised as with respect to the granting or denial of citizenship on the basis of a finding that an applicant was not attached to the principles of the Constitution and was not well disposed to the good order and happiness of the United States. The test to be used in making such a finding under not only naturalization provisions, but under the provisions of any law, regulation or executive order should be a clear and concise one, readily understood by

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not only our citizens and our resident aliens, but those who look to the shores of the United States as a place of refuge from tyrany and oppression, or who look to our form of government and the basic principles by which the citizens of the United States govern themselves as an example for the establishment of order, peace and happiness throughout the world.

Because the test used to reach the finding in this case did not include a consideration of decisions in other cases by this Court on the interpretation to be given to the phrases "attached to the principles of the Constitution" and "well disposed to the good order and happiness of the United States" and did not include a consideration of the aspects of freedom of speech within the meaning of the first amendment to the United States Constitution within the "clear and present danger" rule, *amicus curiae* urges that the petition be granted in this case. Specifically, we urge that the petition be granted in this case so that the Court may consider three broad, basic aspects of the problem of the basis for the granting of citizenship, which we submit were erroneously considered by the Circuit Court:

1. Adherence to the principles of the Constitution of the United States has the same meaning for those who seek to become citizens as for those who are citizens.

2. A belief in collectivism does not violate the principles of the Constitution of the United States, nor does it mean that a person who so believes is not well disposed to the good order and happiness of the United States.

3. A naturalization law which would deny citizenship to those who advocate or desire economic or political change would be unconstitutional.

ARGUMENT.

I.

Adherence to the Principles of the Constitution of the United States Has the Same Meaning for Those Who Seek to Become Citizens as for Those Who Are Citizens.

Citizenship in the first analysis is a privilege and not a right. The people of the United States in adopting a Constitution by which they agreed to be bound need not have allowed anyone to become citizens. However, they granted the power to Congress to establish a uniform rule on naturalization.[1] Congress need not have established a rule at all, but once having established such a rule,[2] ". . . there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established to receive the certificate. . . . In passing upon the application the court exercises judicial judgment. It does not confer or withhold a favor."[3]

It is true that, as with any other right, privilege or benefit granted by a government, any doubt is to be construed in favor of the government and against the party claiming the grant.[4] However, this construction must be a judicial one, in accord with judicial decisions. To overlook well established judicial principles is to abuse the discretion vested in a trial judge. Disagreement or even

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[1]U. S. Constitution, Art. 1, Sec. 8, cl. 4.

[2]Nationality Act of 1940, Sec. 307 (54 Stat. 1142, 8 U. S. C. 707).

[3]*Tutun v. United States*, 270 U. S. 568, 578 (1925).

[4]*United States v. Manzi*, 276 U. S. 463, 467 (1928); *Swan and Finch Company v. United States*, 190 U. S. 143, 146 (1903).

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hatred of views which an applicant for citizenship may hold or have at one time held is not the criterion for admission to citizenship. Justice Holmes in his dissent in the Schwimmer case stated:

> ". . . if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country."[5]

That view was expressly adopted by this Court in the *Girouard* case.[6]

Although the burden of proof is upon the applicant in proceedings instituted to obtain citizenship, and upon the government in revoking or cancelling a certificate of naturalization,[7] the test of allegiance to this government invoked in both instances is the same whatever the rule may be with respect to burden of proof. Logically, this must be the rule. To say that to be attached to the principles of the Constitution of the United States has one meaning for those who seek to become citizens, but a different meaning for those who at one time were granted citizenship is to establish the proposition that the principles of the Constitution may vary solely on the basis of who seeks to establish them—an applicant for citizenship or the government. Such could hardly have been the intention of the framers of the Constitution or of Congress

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[5]*United States v. Schwimmer*, 279 U. S. 644, 654-55 (1929).

[6]*Girouard v. United States*, 328 U. S. 61, 68 (1946).

[7]*Schneiderman v. United States*, 320 U. S. 118, 122 (1943); *Baumgartner v. United States*, 322 U. S. 665, 675 (1944).

in establishing a uniform rule on naturalization. Principles may change with the changing times, but not with the persons who seek to establish attachment to them.

While it is proper for a court and its duty before granting citizenship to an applicant to be vigilant in inquiring into the mental attitude of the applicant, that inquiry should be made with the view always in mind that the Constitution itself has throughout the history of the United States been subject to differing mental attitudes on the part of its citizens, its legislators, administrators and judiciary, and these often depend upon and are interpreted with the ever-changing economic conditions. Part of this inquiry concerns the good moral character of the applicant and knowledge of this country through residence and understanding of the general operation of its laws, for it is contemplated that admission to citizenship should be mutually beneficial to the government and the applicant. The fact that a showing with respect to residence and moral character and otherwise must be made in addition to showing attachment to the principles of the Constitution does not mean that this attachment means one thing for an alien seeking citizenship and another for a citizen.

The principles of the Constitution having the same meaning for all who seek to establish attachment to them, however the burden of proof may vary in a given case, it was error for the Circuit Court to hold that "Denaturalization cases and deportation cases cited by appellant are not in point here, for this is neither a denaturalization case nor a deportation case."[8]

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[8] *Wixman v. United States*, 167 F. 2d 808, 811 (1948).

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II.

A Belief in Collectivism Does Not Violate the Principles of the Constitution of the United States, Nor Does It Mean That a Person Who so Believes Is Not Well Disposed to the Good Order and Happiness of the United States.

Petitioner was denied citizenship in the United States, the country where, the evidence showed, he had lived since the age of 11, attended the public schools, high school, Yale University [R. 178] and the University of California, and served as a volunteer in the Army of the United States in World War I, the army of the country of which he considered himself a citizen from the time of a ceremony during such service. [R. 178.] This denial was based upon findings, with the correctness of which we are not here concerned as findings of fact, that the evidence showed that petitioner had "attitudes of collectivism" of which he was a "protagonist" [R. 290] and the conclusion of law was reached that because of being a "protagonist" of "attitudes of collectivism," his ideas were not "along the lines of constitutional make-up," but "along the lines of foreign or alien ideology." [R. 290.]

In its broadest sense, one who believes in "collectivism" is merely one who believes in doing things in a collective manner. Were there not people who believed in this principle, there would be no United States, no states, no counties, no cities, no towns, or no community enterprises of any sort. Our whole republican form of government is based upon a "collectivism" in one sense of the word.

In its narrower sense, a "collectivist" is one who is a member of a school of economic thought which accepts the theories of the socialists, but withholds approval from

revolutionary doctrines.[9] Socialism is a political and economic theory of social organization based on collective or governmental ownership and democratic management of the essential means of the production and distribution of goods.[10] This is not a foreign ideology in the United States. Many instances of government ownership and democratic management of the essential means of production of goods are evident in this country. To name but a few: T. V. A., Hoover Dam, the public school system, the Los Angeles Department of Water and Power, the United States Post Office, Fire Departments, Police, Forestry Service, the Veterans Administration. The recognition of corporations and of collective bargaining rights on the part of unions is a recognition of a degree of collectivism.

Capitalism may be defined as an economic system in which the ownership of land and natural wealth, the production, distribution and exchange of goods, and the operation of the system itself, are effected by private enterprise and control under competitive conditions.[11] Following such a definition, there has never been pure capitalism in this country. Only after New York and Virginia agreed to surrender their claims to Western lands would Maryland ratify the Articles of Confederation in 1781 and by her ratification was the new government established. This collectively held Northwest was a common bond of union for all the states—held by the federal government, not by

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[9]Webster's New International Dictionary of the English Language, Second Edition Unabridged, 1940. See also: Walton H. Hamilton, Collectivism, Encyclopaedia of Social Sciences, Vol. III, 1930.

[10]*Ibid.*

[11]*Ibid.*

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private individuals.[12] Partial control of the economic system was early taken over by our government in the form of protective tariffs and a national monetary system. Instance after instance may be given of governmental control and some of the ownership of land and of natural wealth, the production, distribution and exchange of goods and the operation of the system itself—governmental operation of the railroads during the first World War, the F. H. A., the A. A. A., the Federal Communications Act, tideland oil, to name but a few. Whether we are or ever have been either a capitalist nation or a collectivist nation is only a matter of degree. Because of this, a person who believes in and advocates capitalism in its pure sense shows as little "steadfast adherence to the processes under which we live and under which a country has been built" [R. 286], as one who believes in collectivism in its pure sense. It is but a matter of degree. As our country has grown great on this combination of both capitalism and collectivism, neither belief is entirely foreign to our way of life, and one who sincerely believes that the country which he wants to make his own may grow greater under one theory or the other and wants to work toward that end through democratic processes is well disposed to the good order and happiness of the United States.

Great weight was given by the District Court in denying citizenship to petitioner to a speech which petitioner made in 1934 or 1935. The Court took judicial notice that this was made during the depression when "the environment was distressful, there was unemployment, people were needy, there were hunger strikes and there were all

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[12]Faulkner, Harold Underwood and Tyler Kepner, *America, Its History and People*, Harper and Bros. 1934, p. 111.

sorts of disorders caused by the distress of those days." [R. 284.] The depression was a time for change and whatever suggestions were made for improvement were welcome. Petitioner in this speech spoke of his love and loyalty to the United States and gave a picture of the United States which he would like to see, "a land of plenty, one, the resources of which were sufficient to wipe out needs, hardships, and poverty for all honestly willing to work; a land in which co-operation and social-mindedness could create all necessities for all." [R. 282.] Petitioner then continued to express his views on the role of a lecturer, teacher or writer as being a person who after careful investigations is bound to reach fairly definite conclusions, that the audience, students and readers are entitled to know these conclusions and from the expression of conclusions definitely formulated, the listener or reader is forced into agreement or disagreement with the author which helps develop logical arguments in support of a stand and in turn defense or attack by those who take an opposing stand, which result in clashes of conflicting ideas, development, growth which is the core of knowledge and "the very life-blood of education." [R. 283.] Petitioner then discussed the system of capitalism, concluding that it failed to "provide the essentials for the system which it hopes will keep alive" [R. 285]; state capitalism, for which he could not build up much of a case [R. 286]; fascism, of which he was critical [R. 200]; and the collectivist state, concluding "that progress, human well-being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialism." [R. 289.] If we assume that petitioner had reached the conclusions expressed, and that he did not merely express them to arouse stimulating thought on the part of his

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listeners, then as an economist in a time of economic crisis, he was performing the duty cast upon all persons, using his special knowledge and training to attempt to find a solution to that crisis, his judgments having in view a "worth-while standard of living for every man, woman and child." [R. 289.] A conclusion by the trial court that no one can find "cause for joy, or happiness, or peace and contentment, for good order to any people, in that lecture" [R. 289] is to conclude that though on its face, the solution was presented for "progress, human well-being-civilization in brief" and the analysis of economic systems based on the end "of a worthwhile standard of living for every man, woman and child under it," such a person cannot have the well being of people or his country at heart if he criticizes or reaches conclusions not in accord with the *status quo*, or capitalism or state capitalism, assumed to be tied in with the "processes under the Constitution." [R. 286.] To reach such a conclusion is to cast doubt upon fundamental democratic principles, under which the policies under which people live are thought to be best formulated by the interaction of pressure groups and where the majority rules without tyrany or oppression because the minority is at all times free to express its criticisms and to win a new majority if its persuasion finds acceptance in the free market place of ideas.

The economic system in which petitioner once presumably believed and for which belief he has now been denied citizenship is a belief upheld by many of our citizens. It is a system recently adopted in part by the great common law nation, England. There it has been found to be an adaptation fully in accord with the English constitutional principles upon which most of the United States are based. The present majority in the United States may think it a

poor system, and unwise for the English people to adopt such a system, and not want to adopt the same economic system in this country, but that does not mean that the system is not in accord with our basic Constitutional principles or that an advocate or believer in such a system is not well disposed to the good order and happiness of the United States. There is a minority party within this country, many of whom have been elected to office, that believes in the same economic system. In *Girouard v. United States,*[13] this Court discussed the fact that no religious test is allowed for holders of public office and in relation to citizenship stated: "There is not the slightest suggestion that Congress set a stricter standard for aliens seeking admission to citizenship than it did for officials who make and enforce the laws of the nation and administer its affairs."[14] So here, if a "collectivist" may run for president, be a member of Congress, or a Governor of a state or a mayor of a town, or other public official, there is no indication that Congress intended that a stricter standard be applied to applicants for citizenship.

To allow the interpretation of the Nationality Act by the District and the Circuit Courts in this instance to stand is to deny the validity of the democratic process. To raise by oral or written discussion, or to produce debate in matters essential to our government, certainly cannot be held to be opposed to our Constitution, for, in fact, our culture looks with pride and esteem upon those who encourage controversy in thought, since only by that means can we better and improve the good and welfare of our people.

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[13]*Girouard v. United States,* 328 U. S. 61 (1946).

[14]*Ibid.,* pp. 65-66.

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III.

A Naturalization Law Which Would Deny Citizenship to Those Who Advocate or Desire Economic or Political Change Would Be Unconstitutional.

Citizenship is a privilege which Congress may grant on such conditions as it sees fit. However, its power in that respect is not unlimited;

> ". . . one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the constitution of the United States may thus be manipulated out of existence."[15]

The advocacy of political and economic change is an exercise of the right of free speech which they may not be curbed without the showing of a clear and present danger.[16] The guarantee of free speech extends to aliens as well as to citizens.[17] As an alien has this right to advocate economic and political change, he may not be required to give up this right or to have never exercised it to become a citizen. Other conditions Congress may and has set for the granting of the privilege of citizenship. The applicant must show that during all the periods of time re-

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[15]*Frost and Frost Trucking Company v. Railroad Commission of California*, 271 U. S. 583, 592 (1926).

[16]*Thornhill v. Alabama*, 310 U. S. 88, 104-105 (1940); *Bridges v. California*, 314 U. S. 252, 263 (1941); *Schneiderman v. United States*, 320 U. S. 118, 157-158 (1943); *Thomas v. Collins*, 323 U. S. 516, 530 (1945).

[17]*Hague v. C. I. O.*, 307 U. S. 496, 519 (1939); *Bridges v. Wixon*, 326 U. S. 135, 148 (1945).

quired for residence he has been and still is of good moral character. The petitioner in the instant case met this burden. The applicant must show also that he is well disposed to the good order and happiness of the United States and attached to the principles of the Constitution. The District Court found that petitioner was at one time at least not so disposed. This finding was not disturbed by the Circuit Court. A wide discretion is lodged in the Court that hears a petition for naturalization, however, this is and must be a judicial discretion.[18] To rule that merely because one advocated change he is not well disposed to the good order and happiness of the United States or attached to the principles of the Constitution is not a judicial determination. Constructive criticism is encouraged by our general system of government, and the value and sincerity of this criticism should not be judged by conformity to prevailing thought.[19]

During the course of debate on the Nationality Act of 1940 in Congress, Representative Rees, Chairman of the Subcommittee of the Committee of Immigration and Naturalization, House of Representatives, which worked on the bill stated:

> ". . . Under this bill, we believe we have covered the question of fascism, nazi-ism, communism, or any other 'ism', although they are not specifically mentioned by name. Provision is made for careful investigation into the applicant's attitude in these matters, both at the time he files his declaration and when he takes out his final papers."

---

[18]*Tutun v. United States,* 270 U. S. 568, 578 (1925).

[19]*Schneiderman v. United States,* 320 U. S. 118, 137-138 (1943).

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Representative Norrell: "In other words, if he is that kind of person to begin with, he cannot become naturalized?" Representative Rees: "The gentleman is right." Representative Norrell: "And if he gets that way afterward, I assume the bill contains provisions whereby the naturalization may be revoked." Representative Rees: "It is my opinion that it would be."[20]

If, as may be inferred from this portion and other parts of the Congressional debate on the Nationality Act of 1940, the intent of Congress was to have the provisions of the Act exclude from citizenship in the first instance or to provide for the expulsion from citizenship of all who advocated economic or political change in any form in the United States, such provisions in the light of the history and the purposes and aims of the founders of the United States and its Constitution would be unconstitutional. The United States can and has existed only with constant improvement. One who sincerely seeks to improve it by Constitutional means is of great benefit to the nation.

Conclusion.

The rights here involved are basic to the growth and welfare of our country. If only those who agree with "prevailing" economic and political thought in this country may become citizens, our future growth and development as a nation will be seriously hampered. Democracy itself is based upon the interaction of pressure groups. To favor one group over another by grants of privileges to one and not to another is to undermine the whole democratic system. The principles of the Constitution have the same meaning for all, citizen or alien.

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[20]Congressional Record, Vol. 89, Part 11, p. 11949.

Wherefore, the petition for a writ of certiora
be granted and the case remanded with directions
petitioner's application for naturalization.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 263

SCHULIM WIXMAN, *Petitioner*,

vs.

THE UNITED STATES OF AMERICA.

Brief of American Jewish Congress as Amicus Curiae in Support of Petition for Writ of Certiorari.

Preliminary Statement.

With the consent of the parties, the American Jewish Congress respectfully submits this brief, as *amicus curiae*, in support of the petition for a writ of certiorari in this case. The American Jewish Congress is an organization composed of American Jews, organized in part ". . . to safeguard the civil, political, economic and religious rights of Jews everywhere" and ". . . to help preserve, maintain and extend the democratic way of life." The activities of the American Jewish Congress have never been confined to the interests of Jewish people alone. It believes that the struggle for human freedom is part of the substance of the Jewish tradition.

In this case the courts below have denied naturalization to an alien on the basis of assumptions which limit the freedom of speech and thought of all non-citizens. We believe that those assumptions reflect growing anti-alien

attitudes in this country. Historically, such attitudes, both in this country and abroad, have always been associated with the impairment of democracy in all its aspects. It is because anti-alien feeling is inseparable from every other kind of repression that we submit this brief.

Questions Presented.

The trial court denied petitioner's application for naturalization on the ground that he had failed to prove that he was "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States" as required in Section 307(a) of the Nationality Act of 1940 (8 U. S. C. 707(a)) [R. 290].

This brief is addressed to the question whether an applicant for naturalization, a college teacher by profession, who in a public speech analyzes the merits and faults of various economic systems and who appears to favor a collectivist or socialistic society (without advocating or favoring its imposition by force or violence) is debarred from obtaining citizenship.

Statement of the Case.

Petitioner's application for naturalization was denied by District Judge Paul J. McCormick on the ground that, upon all the evidence, petitioner had not "sustained the burden of proof which is imposed upon him . . . that he is now attached to the principles of the Constitution of the United States and well disposed towards the good order and happiness of the American people and of the people of the United States" [R. 290]. The Circuit Court of Appeals for the Ninth Circuit affirmed this decision solely on the ground that the burden of proof in naturalization proceedings is on the petitioner [R. 38].

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Petitioner is uniquely qualified by education, background and temperament, to receive the privileges of citizenship and to become a useful citizen. He was born in the Ukraine in 1900 and came to the United States with his mother at the age of 11 [R. 177]. The family migrated to New Haven, Connecticut and there petitioner attended public school and Yale University [R. 177]. He graduated from Yale in 1923, his education having been interrupted while he served in the United States Army during the First World War [R. 177-178]. He was honorably discharged from the service [R. 178].

While in the army petitioner filed certain papers which were later established to be a declaration of intention to become a citizen. Following the filing of these papers, he and other non-citizen soldiers were called together and an oath was administered to the group by someone in the military establishment [R. 178]. He was told that this completed the formalities of becoming a citizen [R. 185]. Thereafter, believing himself a citizen, he conducted himself as such, voting in national elections and otherwise assuming the privileges and prerogatives of citizenship [R. 179]. In 1940, when matters of citizenship again became a subject of concern and inquiry because of the National Emergency, petitioner addressed a request to governmental agencies for a certificate of naturalization [R. 179]. He then learned that he had not completed all the formalities during the First World War and was not eligible for a certificate of naturalization [R. 179]. He forthwith voluntarily cancelled his voting registration and filed a new petition for naturalization [R. 179-180].

After graduating from college, the petitioner served for a time as instructor in history and economics at the University of California [R. 179] and thereafter, from 1929

to 1940, taught economics and history at the Los Angeles City College, a state supported institution affiliated with the University of California [R. 179]. During World War II petitioner was active in USO and Civilian Defense [R. 215]. Since he resigned from his teaching position at City College in 1941, he has served in responsible capacities for various Jewish communal organizations, first as field representative for the Hillel Foundation of the B'nai Brith, and at present as Executive Director of the Jewish Personnel Relations Bureau, a subdivision of the Los Angeles Jewish Community Council [R. 184].

Petitioner married a native-born American citizen 21 years ago and has a son of college age who was born in the United States [R. 233].

It has never been contended, and the government does not suggest, that petitioner is a member of, affiliated with or sympathetic to the Communist Party or of any other organization advocating the overthrow of our government by force or violence.

We shall not attempt here to describe in detail the evidence presented by petitioner or the government in the trial court, since the rulings of the District Judge sufficiently indicate the manner in which the question stated above is raised. The Judge's opinion [R. 280-290] was devoted chiefly to a lecture given by petitioner in 1934 which was one of a series of faculty lectures at the college and was attended by about 100 persons [R. 5-25, 190, 210]. The Judge also relied to some extent on the testimony of two professors who served with petitioner on the

City College faculty and one or two students who attended petitioner's classes [R. 280]. He found insufficient evidence of loyalty in the testimony of 49 witnesses called by petitioner, including nine former colleagues, judges, doctors, lawyers, business men, and neighbors and officers of veterans organizations, all of whom had known petitioner for long periods of time and recommended him for citizenship [R. 289].

The Judge concluded that petitioner "was a collectivist and was advocating that theory of political philosophy" [R. 281; see also R. 284, 290], and that in the 1934 lecture he did not present "the sort of a picture that should be presented by a teacher of the youth of America during a time of travail and distress" [R. 286; see also R. 289, 290]. He found that "one who holds up that sort of a picture cannot be said to be well disposed towards the good order and happiness of the American people" [R. 286]. With respect to the question of academic freedom, he said, "The instructor should be a stimulating instructor, as one of the witnesses stated, but he should stimulate adherence to the American principle of life and not to some foreign ideology that is entirely alien to the make-up of the United States" [R. 290].

Argument.

I.

The courts below were clearly in error in denying naturalization solely on the ground that petitioner "advocated" social and economic change.

From the days of the Founding Fathers, it has been recognized that our democracy does not require a slavish adherence to the existing social and economic system nor inhibit the advocacy of political change. Thomas Jefferson said in his inaugural address:

> "If there be any among us who wish to dissolve this Union, or to change its republican form, let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."[1]

That basic concept has been repeatedly reaffirmed by this Court:

> ". . . but freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."
>
> *Board of Education v. Barnette*, 319 U. S. 624, 642 (1943).

> "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty."
>
> Brandeis, J. dissenting in *Whitney v. California*, 274 U. S. 357, 377 (1927).

> "Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth."
>
> *Thornhill v. Alabama*, 310 U. S. 88, 95 (1940).

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[1]Writings, Vol. 8, pp. 1, 3.

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Protection of the right to advocate economic change is of most vital importance today when we are confronted with an increasing intolerance of minority views on all fronts. As one prominent student of civil liberties has recently said, in periods such as the present, the courts can and should "set up standards to which the followers of freedom can repair."[2]

Thus, it would be important and timely for the Court to consider this case even if the questions were presented *de novo*. However, it seems clear that the decisions below are in direct conflict with this Court's opinion in the *Schneiderman*[3] case. That case represents the latest and most authoritative definition by the court of a statutory requirement of "attachment to the principles of the Constitution." The opinion leaves no room for doubt in its holding that such a statute does not require "attachment to any particular provision or provisions." It emphasizes the error of the prevailing belief that "one who advocates radical change is necessarily not attached to the Constitution."[4] It specifically holds that one who advocates socialization of the means of production, to be brought about by changes in the Constitution, does not thereby violate the statutory test.[5]

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[2]Grenville Clark, *Civil Liberties: Court Help or Self Help, Constitutional Rights,* Edited by Herbert F. Goodrich, American Academy of Political and Social Science, 1938, p. 7.

[3]*Schneiderman v. United States,* 320 U. S. 118 (1943).

[4]320 U. S. at 137-138.

[5]*United States v. Rovin,* 12 F. 2d 942 (D. C. Mich., 1926).

Despite the clear pronouncement by this Court in the *Schneiderman* case, there has been great uncertainty and confusion among the lower Federal courts as to the meaning of "attachment to the principles of the Constitution." Although some courts have held that a desire for economic and social change does not indicate the absence of attachment to the principles of the Constitution,[6] other lower courts have said that those who advoate change by amendment of the Constitution are not so attached.[7]

The unusually restricted view of the statute taken by the District Judge here is revealed by his conclusion that special limitations must be placed on the admission to citizenship of those in the teaching profession. Thus he stated at the hearing that "so far as this court is concerned, it is not going to admit persons to citizenship who are teachers, concerning whom this court feels there is any lack of attachment to the principles of the Constitution of the United States" [R. 236]. We submit that it is particularly odious to demand that teachers eschew all independent

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[6] 320 U. S. at 141.

[7] *In re MacKay*, 71 F. Supp. 397 (D. C. Ind., 1947);
In re Saralieff, 59 F. 2d 436 (D. C. Mo., 1932);
Cf. United States v. Tapolcsanyi, 40 F. 2d 255 (C. C. A. Pa., (1930).

For further evidence of the confusion among the lower courts, see:

In re Skoglund, 46 F. Supp. 434 (D. C. Minn., 1942);
Allan v. United States, 115 F. 2d 804 (C. C. A. 9th, 1940);
In re Val Lae Ken, 22 F. Supp. 145 (D. C. Cal., 1938);
In re Olson, 4 F. 2d 417 (D. C. W. D. Wash., N. D. 1925);
Ex parte Sauer, 81 Fed. 355 (D. C. Tex., 1891);
Cf. Petition of Maikert, 67 F. Supp. 36 (D. C. Pa., 1946);
Cf. Schwab v. Coleman, 145 F. 2d 672 (C. C. A. 4th, 1944).

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thought in the political field and avoid expressions which might raise doubts concerning their orthodoxy.

A review of the instant decision is needed, if for no other reason, in order to clarify the law and to settle the uncertainty prevalent in the lower federal courts.[8]

Conclusion.

The question here presented is whether an alien may be denied entry into the ranks of citizens because of a critical evaluation of our economy resulting in a desire for economic change.

In opening the ranks of our citizenry to the alien who has had sufficient courage and interest in the welfare of his fellow man to study and evaluate the *status quo* and believes it can be improved within the framework of the democratic process, "we have nothing to fear, except fear itself." If we bar citizenship to all who believe in free discussion of economic and political change, we restrict the "free market place of ideas" necessary to progress and the development of the nation. As this Court once stated: "Compulsory unification of opinion achieves only the unanimity of the graveyard."[9]

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[8]That uncertainty is in no small part due to the fact that the appellate courts occasionally permit only a very narrow scope to their review of District Court decisions in naturalization cases. Thus the Circuit Court of Appeals here appears to have felt that its powers of review were so limited that it could not interfere even with an obvious application of purely personal considerations on the part of the District Judge. There is a clear need for reexamination by this Court of the question whether the scope of review in naturalization cases is indeed so limited.

[9]*Board of Education v. Barnette*, 319 U. S. 624, 461 (1943).

The American Jewish Congress earnestly supports the petition in this case and urges grant of a writ of ceriorari by this Court.

Respectfully submitted,

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DECEMBER 6, 1948.

Per Curiam Decisions.

No. 263. WIXMAN *v.* UNITED STATES. On petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit. *Per Curiam:* The petition for writ of certiorari is granted. The judgment of the Court of Appeals affirming the judgment of the District Court is reversed for the reason that there is insufficient evidence in the record to support it. The judgment of the District Court is vacated and the case is remanded to that court for further proceedings. *A. L. Wirin* and *Fred Okrand* for petitioner. *Solicitor General Perlman* filed a memorandum for the United States suggesting that certiorari issue and that, without further argument, the judgment below be reversed and the cause remanded to the District Court. Briefs of *amici curiae* supporting the petition were filed by *Charles A. Horsky, Julien Cornell, Osmond K. Fraenkel* and *Arthur Garfield Hays* for the American Civil Liberties Union; *Robert W. Kenney* for the National Lawyers Guild et al.; and *Isaac Pacht, Clore Warne, Irving Hill, Shad Polier, William Maslow* and *Joseph B. Robison* for the American Jewish Congress. Reported below: 167 F. 2d 808.

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